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Presidential Documents

Title 3—

The President

Memorandum of July 7, 2023

Delegation of Authority Under Section 506(a)(1) and Section 614(a)(1) of the Foreign Assistance Act of 1961

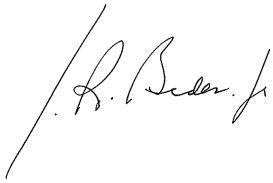
Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State:

(1) the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $800 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown; and

(2) the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to $122 million in assistance to Ukraine without regard to any provision of law within the purview of section 614(a)(1) of the FAA.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 7, 2023

[FR Doc. 2023–15010
Filed 7–12–23; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0707; Airspace Docket No. 18–AWP–28]

RIN 2120–AA66

Establishment of Class E Airspace; Benton Field Airport, Redding, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Benton Field Airport, Redding, CA. The Class E airspace supports the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Effective 0901 UTC, October 5th, 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 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 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: Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 49985; August 17, 2020) for Docket No. FAA–2020–0707 to establish Class E airspace at Benton Field Airport, Redding, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in support of the proposal.

Differences From the NPRM

Subsequent to the publication of the NPRM, the FAA determined that a modification of the original Benton Field Class E5 airspace proposal is needed to remove a small gap between the proposed airspace at Benton Field Airport and the existing airspace at Redding Regional Airport, Redding, CA. Additionally, the arrival procedures were modified and renamed to circling-only type approaches, which warranted a revision to the proposed modification of Class E airspace extension to the south of the airport to better contain the procedures. Accordingly, the FAA published a supplemental notice of proposed rulemaking (88 FR 19895; April 4, 2023). 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 E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 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

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 3.3-mile radius of Benton Field Airport, CA. In addition, airspace extending upward from 700 feet above the surface is established within 4 miles east and 2.3 miles west of the 002° bearing from the airport, extending from the 3.3-mile radius to 12.4 miles north of the airport. Furthermore, airspace is established extending upward from 700 feet above the surface within 3.1 miles each side of the 179° bearing from the airport, extending from the 3.3-mile radius to 8.8 miles south of the airport. This airspace would contain IFR departures to 1,200 feet above the surface and IFR arrivals below 1,500 feet above the surface, supporting the airport's transition from VFR to IFR operations.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order 7400.11is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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.

* * * * *

AWP CA E5 Redding, CA [New]

Benton Field Airport, CA

(Lat. 40°34′25″ N, long. 122°24′26″ W)

That airspace extending upward from 700 feet above the surface within a 3.3-mile radius of the airport, within 4 miles east and 2.3 miles west of the 002° bearing from the airport, extending from the 3.3-mile radius to 12.4 miles north of the airport, and within 3.1 miles each side of the 179° bearing from the airport, extending from the 3.3-mile radius to 8.8 miles south of the airport.

* * * * *

Issued in Des Moines, Washington, on July 6, 2023.

B.G. Chew,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2023–14752 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1008; Airspace Docket No. 23–AGL–14]

RIN 2120–AA66

Amendment of Class E Airspace; Wabash, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Wabash, IN. This action is the result of an airspace review caused by the decommissioning of the Kokomo very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Wabash Municipal Airport, Wabash, IN, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–1008 in the **Federal Register** (88 FR 29577; May 8, 2023) proposing to amend the Class E airspace at Wabash, IN. 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 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 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 amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of Wabash Municipal Airport, Wabash, IN; and updates geographic coordinates of the airport to coincide with the FAA's aeronautical 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 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.

* * * * *

AGL IN E5 Wabash, IN [Amended]

Wabash Municipal Airport, IN
(Lat. 40°45′43″ N, long 85°47′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wabash Municipal Airport.

* * * * *

Issued in Fort Worth, Texas, on July 10, 2023.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–14844 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

[NASA Document No: NASA–23–054; NASA Docket No: NASA–2023–0003]

RIN 2700–AE70

Delegations and Designations; Correction

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule; correction.

SUMMARY: NASA published a document in the **Federal Register** on July 5, 2023, concerning Delegations and Designations. The document contained an error in amendatory instruction 2.a.

DATES: This correction is effective September 5, 2023. If adverse comments are received on the direct final rule published at 88 FR 42870, NASA will publish a timely withdrawal of the rule and this correction to the rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Daniela Cruzado, 202–295–7589.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 5, 2023, in FR Doc. 2023–14042, published at 88 FR 42870, the following correction is made:

§ 1204.501 [Amended]

■ 1. On page 42871, in the first column, correct amendatory instruction 2.a. for § 1204.501 to read: ''a. In paragraph (a) introductory text, add the words ''the Office of'' before the word ''Strategic'' and remove the words ''Integrated Asset Management'' and add in their place the words ''Facilities and Real Estate.''

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2023–14794 Filed 7–12–23; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AF15

Governance Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is adopting amendments to its rules to require derivatives clearing organizations (DCOs) to establish and consult with one or more risk management committees (RMCs) comprised of clearing members and customers of clearing members on matters that could materially affect the risk profile of the DCO. In addition, the Commission is adopting minimum requirements for RMC composition and rotation, and requiring DCOs to establish and enforce fitness standards for RMC members. The Commission is also adopting requirements for DCOs to maintain written policies and procedures governing the RMC consultation process and the role of RMC members. Finally, the Commission is adopting requirements for DCOs to establish one or more market participant risk advisory working groups (RWGs) that must convene at least two times per year, and adopt written policies and procedures related to the formation and role of the RWG.

DATES: Effective July 13, 2023. DCOs must comply by July 12, 2024.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, (202) 418–5096, *edonovan@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; Theodore Z. Polley III, Associate

Director, (312) 596–0551, *tpolley@cftc.gov;* or Joe Opron, Special Counsel, (312) 596–0653, *jopron@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, 77 West Jackson Boulevard, Suite 800, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 5b(c)(2) of the Commodity Exchange Act (CEA) sets forth core principles with which a DCO must comply in order to be registered and to maintain registration as a DCO (DCO Core Principles),[1] and part 39 of the Commission's regulations implement the DCO Core Principles. DCO Core Principle O requires a DCO to establish governance arrangements that are transparent, fulfill public interest requirements, and permit the consideration of the views of owners and participants.[2] Regulation § 39.24 implements this aspect of Core Principle O by providing minimum requirements regarding the substance and form of a DCO's governance arrangements.

In August 2022, the Commission proposed several amendments to § 39.24 to enhance the Commission's DCO governance standards (the ''Proposal'').[3] The purpose of the Proposal was to further the implementation of DCO Core Principle O, which requires a DCO to establish governance arrangements that are transparent, fulfill public interest requirements, and permit the consideration of the views of owners and participants,[4] by enhancing and standardizing DCO risk governance requirements and improving participant involvement in DCO risk management. The specific recommendations in the Proposal are consistent with recommendations made in a report by the Central Counterparty (CCP) Risk and Governance Subcommittee (Subcommittee) of the Market Risk Advisory Committee (MRAC), a discretionary advisory committee established by the authority of the Commission in accordance with the Federal Advisory Committee Act, as amended.[5] In the Proposal, the Commission first proposed to require each DCO to establish one or more RMCs and require the DCO to require its board to consult with, and consider and respond to input from, its RMC(s) on matters that could materially affect the risk profile of the DCO. The Commission also proposed requirements related to the composition and activities of RMCs. Second, the Commission proposed to require each DCO to establish one or more RWGs in order to seek risk-based input (as opposed to commercially-driven input) from a broader array of market participants. The Commission also requested comment on the following topics that the Commission might address in a future rulemaking: (1) whether the Commission should require a DCO to consult with a broad spectrum of market participants prior to submitting any rule change pursuant to §§ 40.5, 40.6, or 40.10; and (2) whether the Commission should require a DCO to maintain policies and procedures designed to enable an RMC member to share certain types of information it learns in its capacity as an RMC member with fellow employees in order to obtain additional expert opinion.

The comment period for the Proposal ended on October 11, 2022. The Commission received 18 substantive comment letters.[6] After considering the comments, the Commission is adopting the Proposal subject to certain changes, as noted below.

II. Amendments to § 39.24(b)

Regulation § 39.24(b) sets forth requirements for a DCO's governance arrangements. The Commission proposed to enhance these requirements by requiring a DCO to: (1) establish one or more RMCs, and require its board to consult with, and consider and respond to input from, its RMC(s) on matters that could materially affect the risk profile of the DCO; (2) appoint clearing members and customers of clearing members to each RMC; (3) rotate RMC membership on a regular basis; (4) establish one or more RWGs; and (5) establish written policies and procedures regarding the RMC consultation process and the formation and role of each RWG.

A. Establishment and Consultation of RMC—§ 39.24(b)(11)

i. Proposed § 39.24(b)(11)

Proposed § 39.24(b)(11) would require a DCO to maintain governance arrangements that establish one or more RMCs,[7] and require a DCO's board of directors to consult with, and consider and respond to input from, its RMC(s) on all matters that could materially affect the risk profile of the DCO, including any material change to the DCO's margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products.[8]

Barclays et al., BlackRock, CME, Eurex, FIA, ICE, ISDA, Nodal, OCC, Paolo Saguato, and SIFMA AMG generally supported proposed § 39.24(b)(11).[9]

However, CME suggested that the Commission modify proposed § 39.24(b)(11) to specify that the board is required to consult with, and consider and respond to ''risk-based'' input (as opposed to commercially-driven input) from the RMC. CME argued that the Commission should make clear its preference for risk-based input as

[1] 7 U.S.C. 7a–1.

[2] *See* 7 U.S.C. 7a–1(c)(2)(O)(i).

[3] Governance Requirements for Derivatives Clearing Organizations, 87 FR 49559 (Aug. 11, 2022).

[4] *See* 7 U.S.C. 7a–1(c)(2)(O)(i).

[5] 5 U.S.C. App. 2; As explained in the proposing release, the Subcommittee, which is comprised of DCOs, clearing members, and end users, published a report outlining a series of recommendations to enhance the Commission's DCO governance standards. This report formed the basis for the Proposal. *See* MRAC CCP Risk and Governance Subcommittee, Recommendations on CCP Governance and Summary of Subcommittee Constituent Perspectives, *available at https://www.cftc.gov/media/6201/MRAC_CCPRGS_RCCOG022321/download* (Feb. 23, 2021).

[6] The Commission received comment letters submitted by the following: Barclays, BlackRock, Inc., Citigroup, Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Co., Societe Generale, T. Rowe Price, UBS AG, and the Vanguard Group. (Barclays, et al.); BlackRock, Inc. (BlackRock); Cboe Clear Digital, LLC (Cboe Digital); The Global Association of Central Counterparties (CCP12); Citadel; CME Group, Inc. (CME); Eurex Clearing AG (Eurex); Futures Industry Association (FIA); ForecastEx LLC (ForecastEx); FTX US (FTX); Paolo Saguato, Assistant Professor, George Mason University Antonin Scalia Law School; Intercontinental Exchange, Inc. (ICE); Investment Company Institute (ICI); International Swaps and Derivatives Association (ISDA); North American Derivatives Exchange, Inc. (NADEX); Nodal Clear, LLC (Nodal); The Options Clearing Corporation (OCC); and Securities Industry and Financial Markets Association's Asset Management Group (SIFMA AMG). All comments referred to herein are available on the Commission's website, at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7304.*

[7] The Commission notes that some DCOs maintain separate RMCs for each product type that they clear. For example, Chicago Mercantile Exchange, Inc.'s Clearing House Risk Committee oversees primarily futures and options products, and its Interest Rate Swaps Risk Committee oversees interest rate swaps products. *See* CME, Governance, accessed on February 3, 2022, *available at https://www.cmegroup.com/education/articles-and-reports/governance.html.*

[8] RMCs are mentioned in existing Commission regulations (*see, e.g.,* § 39.24(b)(7)) given that many DCOs already have them, but current regulations do not explicitly require a DCO to establish an RMC or prescribe the nature of its role.

[9] Eurex also stated that proposed § 39.24(b)(11) aligns with sections (1)–(3) of Article 28 of EMIR.

opposed to commercially-driven input because it is imperative to ensure that market participants acting as RMC members, consistent with current Commission regulations, prioritize the safety and efficiency of the DCO and support the stability of the broader financial system.

FIA and SIFMA AMG recommended that the Commission modify proposed § 39.24(b)(11) to require an RMC to meet at least quarterly. FIA further recommended that the Commission should require a DCO to provide regular written risk reports to RMC members between RMC meetings. FIA also suggested that the Commission should require an RMC to include the following topics as standing agenda items: stress testing results, sensitivity analysis, stress test scenarios review, back testing results, collateral composition, and financial resources.

ForecastEx and NADEX expressed support for the concept of an RMC, but argue that applying the proposed RMC requirements to DCOs that clear only fully collateralized positions would serve no meaningful purpose because they carry no credit risk, which, in turn, eliminates or minimizes the significance of margin models, default procedures, participation requirements, and risk management procedures.

ICE and OCC requested that the Commission clarify whether proposed § 39.24(b)(11) will provide a DCO with the option to structure its RMC as either an advisory committee or as a board-level committee. ICE, which operates four registered DCOs,[10] argued that a DCO should be able to choose either option, noting that some ICE DCOs have an advisory RMC which makes recommendations to the board, while others have a board-level RMC with responsibility delegated by the board for governance and oversight over the DCO's risk management function. ICE stated that the decision to establish an advisory RMC or a board-level RMC depends upon each DCO's size, markets, business model, and other regulatory requirements. OCC noted that it has delegated its risk management responsibilities to several board-level committees, each with a specific subject matter responsibility, that in most instances make recommendations to the board and in some instances may act on behalf of the board through delegated authority. OCC urged the Commission to collaborate with the Securities and Exchange Commission (SEC) to resolve what it believes to be a potential conflict between proposed § 39.24(b)(11), which OCC believes requires an RMC to be an advisory committee, and recently proposed SEC regulations (SEC Proposal),[11] which OCC believes require an RMC to be a committee of the board of directors.

OCC asked that the Commission clarify that a DCO would be permitted under the proposed rules to delegate various risk management responsibilities to multiple committees (*e.g.,* an Audit Committee that oversees legal and compliance risk, and a Technology Committee that oversees information technology and security risks), rather than using a single body labeled ''risk management committee,'' so long as those bodies each satisfy the requirements of an RMC.

With regard to the non-exhaustive list of matters that could materially affect the risk profile of the DCO included in proposed § 39.24(b)(11), ISDA recommended that the Commission add ''rule enforcement policy [and] public information policy,'' while FIA recommended that the Commission add ''outsourcing function, system safeguards, access models, liquidity risk, financial resources, and non-default procedures.''

Cboe Digital stated that the Commission should remove the list and simply require DCOs to have policies and procedures for determining whether a matter could affect the DCO's risk profile. It argued that the list is broad and undefined, and added that if the Commission is going to keep the list, that it should more narrowly define the included matters. Specifically, Cboe Digital argued that it's not clear whether a change to one of the included matters that is material but not risk-based would still need to go to the RMC. OCC recommended removing ''new products'' from the list of items that could materially affect the risk profile of a DCO, but requested that if the Commission retains the explicit reference to ''new products'' in the final rule, it limit the requirement to new ''asset classes,'' or define a subset of ''new products'' that would be captured by the final rule to include only those that have margining, liquidity, default management, pricing, or other risk characteristics that differ materially from those currently cleared by the DCO.

The Commission agrees with CME that it is important to ensure that market participants serving on an RMC provide risk-based input and prioritize the safety and efficiency of the DCO and support the stability of the broader financial system, rather than the commercial interests of the firm they represent. For that reason, proposed § 39.24(c)(3) requires a DCO to maintain policies designed to enable its RMC members to provide independent, expert opinions in the form of risk-based input (as opposed to commercially-driven input) on all matters presented to the RMC for consideration.

However, there is a distinction between the substantive merits of RMC members' input and their motivations for providing that input. A DCO's board of directors cannot reliably determine whether input from RMC members is motivated by the RMC members' views of the safety and efficiency of the DCO and financial stability, or by the commercial interests of the members' firms. Accordingly, the Commission declines to modify proposed § 39.24(b)(11) to require a DCO's board of directors to only respond to risk-based input, as suggested by CME. In the interest of transparency, a DCO's board must respond on the merits to all substantive input from the RMC. If a DCO's board believes that RMC input is incorrect or misguided on the merits, the board should note that in its response.

In response to comments by FIA and SIFMA AMG suggesting that the Commission should require an RMC to meet at least quarterly, the Commission believes that an RMC would generally need to meet at least quarterly to meet its obligation to consult with the board on all matters that could materially affect the risk profile of the DCO, and notes that many DCOs already require their RMC(s) to meet at least quarterly.[12]

[10] The four DCOs are ICE Clear Credit LLC, ICE Clear Europe Limited, ICE Clear US, Inc., and ICE NGX Canada Inc.

[11] In August 2022, the SEC proposed enhancements to its governance requirements for central counterparties. *See* Clearing Agency Governance and Conflicts of Interest, Securities Exchange Act Release No. 34–95431 (Aug. 8, 2022), 87 FR 51812 (Aug. 23, 2022), *available at https://www.sec.gov/rules/proposed/2022/34-95431.pdf.*

[12] The Commission notes that the risk committee charters of CME, ICC and OCC require the committee to meet at least four times per year, and the LCH Limited and LCH SA risk committee charters require the committees to meet at least six times per year. Chicago Mercantile Exchange, Inc., Clearing House Risk Committee Charter, § 3 (May 3, 2022), *available at http://investor.cmegroup.com/static-files/7445789a-8aaa-46ec-8539-069e8cbf0fab;* The Options Clearing Corporation, Risk Committee Charter § 3 (May 26, 2022), *available at https://www.theocc.com/getmedia/e71a4c1d-52dc-4c95-aeb1-98dab9159f41/risk_committee_charter.pdf.;* LCH SA, Terms of Reference of the Risk Committee of the Board of Directors, § 2.4 (Sep. 9, 2020), *available at https://www.lch.com/system/files/media_root/LCH%20SA%20-%20RiskCo%20ToRs.pdf;* LCH Limited, Terms of Reference of the Risk Committee of the Board of Directors, § 2.4 (Jan. 4, 2023), *available at https://www.lch.com/system/files/media_root/LCH-Limited-Risk-Commitee-Terms-of-Reference.pdf.*

In an unusual circumstance in which the material risk issues facing the DCO would allow for more than three months to pass between RMC meetings, the Commission does not wish to impose a meeting on RMC members that are already devoting significant time to advising the board on risk issues. Therefore, the Commission declines to modify proposed § 39.24(b)(11) to add a requirement that each RMC convene at least quarterly.

The Commission also declines to adopt FIA's suggestion that the Commission require a DCO to provide a regular written risk report to RMC members between RMC meetings. While the Commission recognizes the potential benefits of this practice, a DCO should have the flexibility to determine the best method of communication with its RMC members to ensure that they are adequately informed on material risk issues such that they can provide effective input to the board. Similarly, the Commission declines to require RMCs to have certain topics as standing items on its agenda. The Commission believes that a DCO's RMC is in the best position to identify the risks most pertinent to the DCO and should have the flexibility to design its meeting agenda accordingly.

The Commission agrees with ForecastEx and NADEX that a DCO that requires each of its clearing members to fully collateralize its positions before a trade is executed has eliminated the credit risk associated with those positions, which, in turn, eliminates or reduces the significance of risk management issues including margin models, liquidity risk management, guaranty funds, stress testing, default procedures, and participation requirements. It is the Commission's understanding that these are the primary topics on which RMCs and RWGs contribute to DCO risk management. The Commission recognizes that fully collateralized DCOs still face operational, legal, and other risks that could materially affect the risk profile of the DCO. However, the Commission believes that given the reduction of many risks facing these DCOs, and the significant attendant reduction in issues for any RMC to address, it is not appropriate to require these DCOs to assume the costs associated with maintaining RMCs and RWGs that satisfy the requirements of this final rule. As a result, the Commission believes that the requirements to have an RMC and RWG are not appropriate for fully-collateralized DCOs. Accordingly, the Commission is adopting new § 39.24(d) to provide that a DCO may satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) of § 39.24 by having rules that permit it to clear only fully collateralized positions. The Commission notes that this is consistent with the carveouts from certain risk-related requirements that the Commission previously provided to fully collateralized DCOs.[13]

In response to comments by ICE and OCC asking the Commission to clarify whether § 39.24(b)(11) will provide a DCO with the option to structure its RMC as either an advisory committee or as a board-level committee, the Commission notes that proposed § 39.24 seeks to provide a DCO with flexibility to design its governance arrangements in a manner that best fits its unique structure provided that it does so in a manner that is consistent with the minimum requirements set forth in § 39.24, as amended by this final rule. Therefore, the Commission confirms that a DCO may structure its RMC as either an advisory committee or as a board-level committee to satisfy the requirements of § 39.24(b)(11).[14] Moreover, in response to OCC's inquiry, the Commission confirms that a DCO may delegate various risk management responsibilities to multiple committees, rather than a single body labeled ''risk management committee,'' so long as each committee complies with the requirements of § 39.24. The Commission notes that the text of § 39.24(b)(11), as proposed and adopted, explicitly acknowledges the possibility of ''one or more'' risk management committees.

In response to comments on the non-exhaustive list of matters that could materially affect the risk profile of the DCO included in proposed § 39.24(b)(11), the Commission continues to believe that the proposed list provides DCOs with an appropriate level of guidance to illustrate matters that require RMC consultation. In response to comments by FIA and ISDA suggesting additional topics, the Commission notes that the list of topics in § 39.24(b)(11) is meant to be illustrative, not exhaustive, and that *all* matters that could materially affect the risk profile of the DCO are subject to the consultation requirement, regardless of whether they fit in a listed category. Therefore, it is not necessary to endeavor to include all potential categories of issues that could materially affect the risk profile of the DCO. In response to Cboe Digital's request that the Commission clarify whether a material change to one of the matters included on the list that does not involve risk issues would still need to go to the RMC, the Commission notes that such a change would not necessarily be subject to the consultation requirement; a board is only required to consult with its RMC(s) on matters that could materially affect the risk profile of the DCO.

ii. Request for Comment—New Products

The Commission also requested comment on whether a DCO's proposal to clear a new product should be categorically treated as a matter that could materially affect the DCO's risk profile for purposes of the proposed § 39.24(b)(11) RMC consultation requirement given the potential for novel and complex risks associated with clearing new products. If so, the Commission requested comment on whether it should define what constitutes a new product for this purpose, and how should it do so. The Commission further questioned whether it should define new products to include, for example, those that have margining, liquidity, default management, pricing, or other risk characteristics that differ from those currently cleared by the DCO, or, in the alternative, should require DCOs to adopt policies defining what constitutes a new product.

In response, BlackRock, Cboe Digital, CCP12, CME, Eurex, FTX, ICE, NADEX, Nodal, and OCC commented that a new product should not be treated categorically as a matter that could materially affect the DCO's risk profile. Several of these commenters (Eurex, Nodal, Cboe Digital, CCP12, NADEX, OCC) noted that many new contracts are simply extensions of, or are substantially similar to, existing contracts. CME, CCP12, Eurex, ICE, and Nodal stated that categorically treating new products as a matter that could materially affect the DCO's risk profile could lead to delays in product launches and unnecessary administrative burden. OCC argued that a categorical definition of new products is incompatible with OCC's unique obligation, as the only listed equity option clearinghouse, to clear an option on an underlying equity within one day after receipt of notification of a registered options exchange's intent to list such option.[15]

[13] *See* Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800, 4803–4805 (Jan. 27, 2020).

[14] If a DCO structures its RMC as an advisory committee to satisfy the requirements of § 39.24(b)(11), it may also have a separate board-level RMC comprised of members of the board of directors.

[15] In support of this assertion, OCC cited generally to its ''Plan for the Purpose of Developing

CCP12 and CME argued that applying the RMC consultation requirement to all new products would be contrary to congressional intent. They noted that the Commodity Futures Modernization Act of 2000 amended the CEA to allow designated contract markets (DCMs) to self-certify new products and list them the next business day.[16] The purpose of this, they argued, was to promote the ability of DCMs to innovate and respond quickly to competitive conditions in fast-changing markets subject to Commission oversight. CME further argued that Congress reaffirmed its support of a streamlined approach to new products in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, when it instituted a 10-day review period for rule submissions [17] but left the review period for product certifications unchanged. CME further noted that DCMs have the primary responsibility for listing new products. While CME acknowledged that a DCO is part of that process and needs to consider new products in light of its product eligibility requirements and risk management framework, CME argued that making the DCO bring all new products through an RMC consultation process would dramatically change a DCO's role by creating a two-track regulatory process, with the DCO's process being more onerous.

ISDA commented that while not all new products will add risk to a DCO, all new products should be submitted to the RMC so it can determine whether board consultation is necessary.

Eurex noted that requiring consultation only with respect to new products that could materially affect the risk profile of the DCO would harmonize with EMIR Article 28(3), which requires a risk committee to advise on the clearing of new classes of instruments. Eurex stated that it believes that if a DCO already clears a certain class of instruments, clearing a new product within that class would not have a material impact on the DCO's risk profile.

BlackRock, Cboe Digital, FIA, ICE, OCC, and SIFMA AMG provided suggestions on how to define new products for purposes of the proposed § 39.24(b)(11) RMC consultation requirement. FIA and SIFMA AMG agreed with the list of factors identified in the request for comment (different margining, liquidity, default management, pricing, or other risk characteristics from products already cleared) and further recommended that the Commission include factors from opinions published by the European Securities and Markets Authority (ESMA).[18] BlackRock stated that if the Commission were to provide guidance on how to define a new product, it should include limited availability of pricing sources, the addition of a new asset class, or the introduction of exceedingly long tenors. ICE stated that while it thinks DCOs are in the best position to define what constitutes a new product, if the Commission were to provide guidance, it should focus the definition on new classes of products, and agreed with the factors identified in the Commission's request for comment. OCC stated that the Commission should limit the definition of ''new products'' to new ''asset classes,'' or define ''new products'' using the factors identified in the Commission's request for comment.

Cboe Digital, CCP12, Eurex, and ICE believe that DCOs are the best judge of what constitutes a new product and stated that many already have policies and procedures in place within their governance arrangements that define what constitutes a new product from a risk management perspective. Cboe Digital commented that the Commission should, instead of categorically treating new products as a matter that could materially affect the DCO's risk profile, require a DCO to establish policies and procedures to determine if a new product or a material change to a new product could materially impact risk. Cboe Digital further commented that if the Commission treats the clearing of a new product as a matter that must be categorically treated as materially affecting a DCO's risk profile, it should seek to harmonize the definition of a new product with the relevant definitions under part 40 of the Commission's regulations.

OCC stated that the proposed rule is also potentially inconsistent with governance-related aspects of other Commission rules that require a DCO to have ''appropriate requirements'' for determining the eligibility of contracts for clearing, including the consideration of the ''[o]rganizational capacity of the [DCO] and clearing members to address any unusual risk characteristics of a product.'' The Commission notes that OCC did not identify the inconsistency. Moreover, the Commission notes that Regulation § 39.12(b)(vii) requires a DCO to consider the ''operational'' (not ''organizational'') capacity of the DCO and its clearing members to address any unusual risk characteristics of a product.

As previously noted, the Commission proposed to require a DCO's board to consult with its RMC if the launch of a new product constitutes a matter that could materially affect the risk profile of the DCO. However, the Commission requested comment on whether it should alternatively require board consultation for products that meet a new, to be added, definition of ''new products,'' and, if so, how the Commission should define ''new products'' for this purpose. After considering the comments, the Commission continues to believe that the Proposal's requirement that a DCO's board consult with its RMC if the launch of a new product constitutes a matter that could materially affect the risk profile of the DCO is appropriate. The Commission recognizes that many new contracts are substantially similar to existing contracts, and therefore requiring a DCO's board to consult with the RMC on all new products could result in unnecessary administrative costs and delays in launching new products. Moreover, the Commission agrees with the several commenters that stated that DCOs are uniquely situated to determine what constitutes a new product. The Commission notes that § 39.24(b)(11)(i) will require DCOs to maintain written policies and procedures regarding the RMC consultation process, which includes policies and procedures for determining which matters could materially affect a DCO's risk profile. The Commission also expects each DCO to define in its policies and procedures what it means to ''materially affect the risk profile of the DCO.'' The Commission believes that the list of factors it identified in the request for comment for determining whether a new product could materially affect the risk profile of the DCO (different margining, liquidity, default management, pricing, or other risk characteristics from products already cleared) are a good starting point for DCOs as they draft or update their policies and procedures in this area.

The Commission noted some confusion in the comments regarding whether the Proposal required board consultation with the RMC for all new products, or only for those that could materially affect the risk profile of the

and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, *available at https://ncuoccblobdev.blob.core.windows.net/media/theocc/media/clearingservices/services/options_listing_procedures_plan.pdf.*

[16] *See* 7 U.S.C. 7a–2(c)(1).

[17] *See* 7 U.S.C. 7a–2(c)(2).

[18] *See* ESMA Opinion on Article 15 and 49: Common Indicators for New products and Services Under Article 15 and for Significant Changes Under Article 49 of EMIR, *available at https://www.esma.europa.eu/document/opinion-common-indicators-new-products-and-services-under-article-15-and-significant.*

DCO. To make it clear in the rule text that the requirement is the latter, the Commission is revising § 39.24(b)(11) to state that the board must consult with its RMC(s) on the previously enumerated items ''as well as the clearing of new products *that could materially affect the risk profile of the derivatives clearing organization*'' (added text in italics).

B. Policies and Procedures Governing RMC Consultation—§ 39.24(b)(11)(i)

i. Proposal

Proposed § 39.24(b)(11)(i) would require a DCO to maintain written policies and procedures to make certain that its RMC consultation process is described in detail, and includes requirements for the DCO to document the board's consideration of and response to RMC input.

BlackRock, CCP12, Eurex, Nodal, and SIFMA AMG supported proposed § 39.24(b)(11)(i). Eurex noted that the proposed rule broadly aligns with Article 28(2) of EMIR and Article 15 of EU regulation 153/2013.

OCC argued that if a board of directors has delegated its risk management responsibilities to a board-level committee, there is no longer a need for the board to consult with and issue a response to that committee.

BlackRock stated that a DCO's board should be required to respond to the substance of the input it receives rather than merely acknowledging the input was received. Doing so, it said, will bolster the effectiveness of RMCs and the board and will ultimately enhance market resiliency. SIFMA AMG commented that it is important that a board's response to the recommendation of the RMC, which should include the board's rationale for its decision, be shared with market participants to help inform their own decisions to continue to clear with that DCO, especially at DCOs where risk is mutualized across clearing members and clearing member customers. CCP12 and Nodal stated that DCOs should have discretion as to how to best document a board's consideration of and response to input from the RMC. They argued that proposed § 39.24(b)(11)(i) permits DCOs to choose the best method of documentation and should not be revised to constrain the acceptable forms of meeting the documentation requirement.

The Commission continues to believe that explicitly requiring DCOs to develop and maintain policies and procedures governing DCO consultation with its RMC(s), and to document the board's consideration of and response to RMC input, will promote transparency, accountability, and predictability, and facilitate effective oversight by the Commission in this area.

In response to OCC's comment, the Commission agrees that if a board of directors has delegated responsibility to a board-level RMC to make certain risk decisions, then it has eliminated the need for the board to consult with the RMC with respect to those decisions.

The Commission confirms that the requirement that a DCO document the board's consideration and response to RMC input requires a board to respond to the substance of the input it receives rather than merely acknowledging that input was received. However, the Commission declines to adopt a requirement that would make a DCO share its response to RMC input with all market participants. The Commission recognizes that some risk-related discussions may involve sensitive information that a DCO may not wish to share broadly. Moreover, the Commission notes that § 39.21(a) already requires DCOs to provide market participants with sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO.[19]

ii. Request for Comment—RMC Meeting Minutes

The Commission requested comment on whether DCOs should be required to create and maintain minutes or other documentation of RMC meetings.

In response, BlackRock, FIA, ISDA, and NADEX stated that RMCs should be required to keep minutes. BlackRock argued that keeping minutes is necessary to promote transparency, accountability, and predictability, and facilitate effective oversight by the Commission in this area. ISDA stated that minutes of RMCs should be made available to RMC members and shared with the board and regulators. It argued that because the decisions made at the RMC meetings have an impact on a wide variety of market participants, DCOs should produce a summary that is made public and that does not include confidential information.

In response to the comments, the Commission is revising proposed § 39.24(b)(11)(i) to require a DCO to maintain written policies and procedures to make certain that ''the [RMC] consultation process is described in detail, and includes requirements for the [DCO] to document the board's consideration of and response to risk management committee input *and create and maintain minutes of each [RMC] meeting*'' (added text in italics). The Commission agrees with BlackRock that requiring RMC meeting minutes will promote transparency, accountability, and predictability, and facilitate effective oversight by the Commission in this area. In response to ISDA's suggestion that a DCO should be required to publish a public summary of RMC meetings, the Commission declines to adopt such a requirement at this time in order to preserve a DCO's ability to protect sensitive information, but notes that § 39.21(c)(9) requires public disclosure of information that is relevant to participation in the clearing and settlement activities of the DCO.[20]

C. Representation of Clearing Members and Customers on RMC—§ 39.24(b)(11)(ii)

Proposed § 39.24(b)(11)(ii) would require a DCO to maintain policies to make certain that an RMC includes representatives from clearing members and customers of clearing members. The Commission requested comment on whether it should adopt additional specific composition requirements, and if so, what those requirements should be.

Barclays, et al., BlackRock, CME, Eurex, FIA, ICE, ISDA, and SIFMA AMG generally supported the proposal to require that an RMC includes representatives from clearing members and customers of clearing members.

SIFMA AMG recommended that the Commission require no fewer than three clearing members and three clearing member customers on an RMC, and, if the overall RMC membership is ''especially large,'' that clearing member and customer participation must represent a ''meaningful component'' of the RMC. ISDA questioned whether the proposed rule will be adequate to ensure sufficient industry input and challenge, and proposed an alternative rule requiring a DCO to have RMC members that ''cover a wide variety of organizations and roles,'' with no fewer than eight external members, at least 50 percent of which are clearing members.

Cboe Digital and NADEX did not support requiring an RMC to include more than one clearing member. Cboe Digital argued that the proposed rule is overly prescriptive and does not account for the differences in size and offerings across DCOs. It argued that the Commission should only require a DCO to have at least one clearing member representative on its RMC, and that a DCO should be permitted to establish a policy that additional clearing member

[19] 17 CFR 39.21(a).

[20] 17 CFR 39.21(c)(9).

RMC representatives should proportionately represent the number of clearing members of (or products offered by, if applicable) the DCO. NADEX stated that the proposed rule would not be appropriate for all DCOs because, for example, a newly registered DCO may only have one clearing member, which would make it unable to include multiple clearing members on an RMC.

Cboe Digital, CCP12, NADEX, Nodal, and OCC did not support the proposed requirement that an RMC also include customers of clearing members and instead supported a principles-based approach that allows a DCO to decide which governance body should have customer representation. Nodal argued that requiring customers of clearing members to be on the RMC could chill dialogue between clearing members and DCOs. For example, a clearing member might choose not to express valid concerns regarding a particular product in front of a customer that may be interested in trading that product, due to the concern that the customer may seek to shift its trading to a different clearing member that is more supportive of the new product. In addition, Nodal stated that it would be difficult to obtain truly independent opinions on risk management matters from clearing members and customers of clearing members, and that the Commission should implement different RMC composition requirements as a result. OCC noted that ''customers'' is not a homogenous group and at certain DCOs it may be impossible to ensure each type of customer group is represented. OCC further noted that customers are not subject to direct mutualization; therefore, it may be difficult to ensure that they are not unduly motivated by their commercial interests. Cboe Digital argued that clearing members are much better suited than their customers to inform DCO risk management frameworks because their expertise, business purposes, and operational structure center around clearing risk and operations in order to fulfil their role of processing, clearing, and settling trades through a DCO, in contrast to customers whose operations can vary widely and do not necessarily focus on clearing operations or risk management.

In response to the Commission's request for comment on whether it should adopt additional specific RMC composition requirements, BlackRock stated that the Commission should adopt further specific requirements. BlackRock gave as an example that, for members, DCOs could require that a minimum percentage of initial margin is represented across a minimum number of participants, setting such parameters to ensure that a meaningful level of risk is represented while preventing dominance by a handful of firms. FIA recommended that the Commission consider requiring RMCs to include DCO representatives, which would include, at a minimum, the President (or a designee) and the Chief Risk Officer. To harmonize with Article 28 of EMIR, FIA recommended that the Commission require that: (1) a number of independent members of the board of directors with the appropriate level of skills and expertise serve on the RMC; (2) the chair of the RMC be an independent member of the board; and (3) no group represented (clearing members, customers of clearing members, DCO and independent directors) have a majority. ICI recommended requiring DCOs to have a ''meaningful proportion'' of customers on their RMCs, and recommended that the Commission set forth selection parameters that would ensure a cross-section of customers are included. ForecastEx stated that the Commission should prohibit affiliates of a DCO from serving as members of an RMC.

NADEX argued that proposed § 39.24(b)(11)(ii) should not apply to ''retail-focused'' DCOs. NADEX stated that for its retail-focused DCO, it should suffice to maintain a ''contact us'' page on its website with an email address, physical address, and live chat option for market participants to provide feedback. NADEX argued that, unlike traditional DCOs in which clearing members generally have expertise in the financial industry and risk management, the overwhelming majority of NADEX's customers are not industry professionals. Instead, they are often new to the industry, lack operational risk management experience, have no ownership or financial stake in the DCO, and require time and education to become acquainted and comfortable with self-directed transactions in short-term derivatives. NADEX also noted that the Commission stated in 2019 when considering proposed rules to define the term ''market participant'' for the purpose of board composition requirements that the Commission was ''sympathetic to [NADEX's] concerns that the burden and cost of including market participants that are primarily retail and not exposed to the risk of lost margin or the default of the DCO's other customers may not be warranted for fully collateralized, non-intermediated DCOs.'' NADEX requested the Commission consider an amended definition of ''market participant'' to substitute for the proposal's use of ''clearing member'' and ''customer of a clearing member'' that would allow the DCO discretion to operate in a manner best suited to its business model. Alternatively, NADEX proposed that any retail-focused DCO be exempt from this requirement in the event the new regulation is adopted as proposed.

Eurex noted that the proposed requirement is consistent with Article 28(1) of EMIR, which requires that a CCP's risk committee be composed of representatives of its clearing members, independent members of the board, and representatives of its clients. Eurex further noted that EMIR Article 28(1) specifies that none of the groups of representatives may have a majority in the risk committee. However, Eurex believes that that the Commission's proposal strikes the right balance and does not need this further requirement.

Finally, OCC noted that proposed § 39.24(b)(11)(ii) requires an RMC to include ''clearing members and customers of clearing members,'' while the SEC Proposal requires an RMC to include ''representatives from owners and participants.'' OCC argued that while these terms are not directly inconsistent, the distinction supports the view that the intended meaning and role of the RMC amongst the CFTC and SEC is inconsistent.

After considering the comments, the Commission is modifying proposed § 39.24(b)(11)(ii) to clarify that the rule requires a DCO to maintain written policies and procedures to make certain that its RMC includes at least two clearing member representatives and at least two representatives of customers of clearing members.

The Commission is not making any substantive changes to proposed § 39.24(b)(11)(ii). The Commission continues to believe that ensuring a minimum level of clearing member and customer representation on RMCs will further the purpose of Core Principle O by providing a consistent, formalized process across all DCOs to solicit, consider, and address input from clearing members and customers before making decisions that could materially affect the risk profile of the DCO. The Commission also continues to believe that the rule as proposed provides appropriate flexibility to account for differences among DCOs in terms of size, business models, resources, and governance structure. Therefore, the Commission declines to adopt the proposals put forth by ISDA and SIFMA AMG that would increase the minimum number of required market participants, and the proposals put forth by Cboe Digital and NADEX to reduce the number of required clearing members.

In response to NADEX's comment that the proposed rule would not be appropriate for all DCOs because, for example, a newly registered DCO may only have one clearing member, which would make it unable to include multiple clearing members on an RMC, the Commission notes that Regulation § 1.3 defines a clearing member as ''any person that has clearing privileges such that it can process, clear and settle trades through a derivatives clearing organization on behalf of itself or others.'' [21] Therefore, a DCO with one clearing member is only possible if a DCO has a single FCM clearing member that clears for all other participants clearing through the DCO, which is not the case at any DCO registered with the Commission. In the event that a DCO had a single FCM clearing member, and no direct clearing members from which to draw RMC members, it could comply with the composition requirement by having multiple representatives from its single clearing member on its RMC. While DCOs will generally benefit from selecting RMC members with the differing perspectives that result from working at different firms, a DCO would not have the ability to do so in this case. Similarly, the Commission notes that a DCO may have only direct clearing members and no customers from which to draw RMC members and therefore would be unable to satisfy the composition requirement with regard to representatives of customers of clearing members. In recognition of this, the Commission is modifying the text of § 39.24(b)(11)(ii) so that a DCO is only required to include on its RMC ''*if applicable,* at least two representatives of customers of clearing members'' (added text in italics).

The Commission has considered the comments opposed to customer representation on an RMC, and continues to believe that the benefits of requiring customer representation on an RMC outweighs the potential costs. Customers provide a perspective on risk management issues that is different from that of the DCO and its clearing members, and as important stakeholders with a financial stake in the integrity of the DCO, they deserve an opportunity to provide input on topics such as the protection of customer assets and collateral at the RMC level, where key risk discussions take place. The Commission also disagrees with Nodal's argument that it would be difficult to obtain independent opinions on risk management matters from clearing members and customers of clearing members. In the Commission's experience, it is common practice that RMC members provide effective risk-based input directed at the safety of the DCO.

After considering the responses to the Commission's request for comment, the Commission does not believe that it is necessary to adopt further specific requirements regarding RMC composition at this time. As noted above, the Commission believes that it is important to provide DCOs with a degree of flexibility in their RMC composition to account for differences among DCOs in terms of size, business models, resources, and governance structure.

In response to NADEX's suggestion that the proposed requirement should not apply to ''retail focused'' DCOs, the Commission does not believe that ''retail focused'' is a meaningful distinction in this context. As previously discussed, some DCOs exclusively clear fully collateralized products, and the Commission agrees that because full collateralization addresses many critical risk issues, a fully collateralized DCO and its participants would not necessarily benefit from having an RMC. Any DCO that offers margined products, on the other hand, whether retail focused or not, must be able to manage the risks of margined products, and should have participants capable of providing meaningful input on the risk topics addressed by the RMC.

Finally, in response to OCC's comment noting that proposed § 39.24(b)(11)(ii), which requires an RMC to include ''clearing members and customers of clearing members,'' and the SEC Proposal, which requires an RMC to include ''representatives from owners and participants,'' are not the same, the Commission acknowledges that the requirements are different, but does not believe this presents any issues in the ability of a dually-registered entity to comply with both requirements.

D. Rotation of RMC Membership—§ 39.24(b)(11)(iii)

The Commission proposed new § 39.24(b)(11)(iii), which would require a DCO to maintain policies to make certain that membership of an RMC is rotated on a regular basis. The Commission also requested comment on whether it should set a minimum frequency for RMC membership rotation, the advantages and disadvantages of doing so, and, if it does set a rotation frequency requirement, what that frequency should be.

Eurex and NADEX do not believe that the Commission should adopt proposed § 39.24(b)(11)(iii), arguing that depending on the size of the DCO and the qualifications of its participants to serve on an RMC, there may not be enough individuals suitable and interested in serving on the committee to rotate regularly. Eurex further argued that the proposed requirement does not align with EU regulation, which affords CCPs the discretion to determine their nomination, renomination, and rotation policies.

BlackRock, Cboe Digital, CCP12, CME, ISDA, Nodal, OCC, and Paolo Saguato support proposed § 39.24(b)(11)(iii), but do not support the Commission establishing a minimum frequency for RMC membership rotation. CCP12 and OCC stated that the importance of continuity and expertise as a means of effectively managing liquidity or credit risks (and ultimately supporting the stability of the broader system) outweighs any governance benefits resulting from a minimum rotation frequency requirement, particularly in the case of DCOs that are systemically important. CCP12, CME, FIA, and Nodal stated that DCOs have members of their risk committees with specialized knowledge of the DCO's risk practices and/or particular products, and such expertise would be hard to replace. BlackRock, FIA, ISDA, and Paolo Saguato stated that DCOs should be allowed to stagger RMC membership rotation. ForecastEx noted that in the case of a DCO with most of its activity coming from a few clearing members, it may be more beneficial from a risk management perspective to ensure that the larger clearing members are represented on the RMC for longer periods of time. OCC stated that if the Commission imposes a rotation requirement, it should clarify that independent directors are not subject to the requirement and that the rotation requirement applies to persons, not the firms they represent. ISDA noted that many DCO RMCs include representatives of management, for example the Chief Risk Officer. ISDA suggested that the rule should only require a DCO to rotate RMC representatives external to the DCO.

FIA stated that the terms of an RMC should not restrict or limit appointed members' tenure. However, FIA supports DCOs defining transparent criteria for RMC membership, such as clearing expertise, market and asset class expertise, etc., and rotating on the basis of these relevant criteria.

ISDA proposed a minimum length of membership of two years to account for the large amount of information a new RMC member needs to process, and the resulting time required to get up to

[21] 17 CFR 1.3.

speed and become a valuable resource for the DCO. ISDA also suggested that it may be appropriate to institute a cap that would prevent RMC members from staying on for more than five consecutive years.

SIFMA AMG recommended that the Commission require that clearing member and customer representatives be grouped for purposes of establishing a staggered rotation. For example, if a DCO chose to have a minimum of three RMC members from each group and a three-year rotation, the DCO could stagger their rotation to ensure continuity of expertise.

ICE stated that prescriptive requirements on the rotation of RMC members also would impose a significant burden on market participants to supply appropriately experienced, knowledgeable, and available employees to participate on the RMCs, as firms may lack or be unwilling to commit resources to provide new individuals for rotation. ICE contended that should such requirements be imposed on DCOs, it may be appropriate for the Commission to, in parallel, impose requirements on market participants to supply the required amount of appropriately experienced employees to participate on RMCs. As the obligation to manage the risks of the DCO resides exclusively with the DCO, ICE believes the DCO has a strong incentive and is best suited to make determinations on RMC membership.

ICE and OCC stated that it is unclear whether the proposed requirement on RMC ''rotation'' is consistent with the SEC Proposal requiring RMC ''reconstitution.''

The Commission continues to believe that requiring a DCO to regularly rotate its RMC membership will promote the ability of clearing members and customers of clearing members from a broad array of market segments to provide their expertise, and will ensure that the RMC provides the DCO with varied perspectives on risk management matters. After reviewing the responses to the Commission's request for comment, the Commission declines to prescribe a minimum frequency for RMC member rotation. The Commission recognizes that there are risk management benefits associated with retaining RMC members who have specialized knowledge of a DCO's operations, risk practices, and/or particular products, and that it may be difficult to replace those members. A DCO may also choose to establish one or more *ex officio* management positions on its RMC, such as the DCO's president or chief risk officer, which it would not need to rotate off of the RMC. The Commission further recognizes that DCOs may also benefit from staggering their rotation and requiring different rotation frequencies for different classes of members. In response to a request by OCC that the Commission carve out an exception for independent directors from a DCO's board who serve on an RMC, the Commission notes that OCC did not explain a need for such a carve-out, and the Commission declines to provide an exception for independent directors from the rotation requirement at this time.[22]

The Commission also notes that in certain circumstances it may be appropriate to rotate a specific RMC member, but not the firm they represent, selecting another individual from the same firm to serve on the RMC. For example, a DCO may make this determination when a significant percentage of contracts cleared on the DCO are cleared by a relatively small number of clearing members. In response to ICE's comment that firms may lack or be unwilling to commit resources, specifically appropriately experienced, knowledgeable, and available employees, to meet the proposed rotation requirement, the Commission believes that, based on current participation in RMCs and the interest in participation expressed through the Commission's MRAC, there is adequate interest. In response to ICE and OCC's statement that it is unclear whether the proposed requirement on RMC ''rotation'' is consistent with the SEC's proposal requiring RMC ''reconstitution,'' the Commission, after reviewing proposed SEC Rule 17Ad–25(d)(1), believes that the provisions are consistent and focused on the same goals.

After reviewing the comments, the Commission is adopting § 39.24(b)(11)(iii) as proposed. As discussed above, the Commission believes that the rule will provide a DCO with the flexibility to choose how to design its policies for RMC membership rotation provided that the DCO's policies and procedures provide for varied perspectives on risk management matters.

E. Establishment of RWG To Obtain Input—§ 39.24(b)(12)

Proposed § 39.24(b)(12) would require a DCO to establish one or more RWGs as a forum to seek risk-based input from a broad array of market participants, such that a diverse cross-section of the DCO's clearing members and customers of clearing members are represented, regarding all matters that could materially affect the risk profile of the DCO. In addition, proposed § 39.24(b)(12) would require a DCO to maintain written policies and procedures related to the formation and role of each RWG, and require that each RWG convene at least quarterly.

The Commission requested comment on whether the proposed requirement that each RWG convene quarterly is the appropriate frequency. The Commission also requested comment on whether it should require a DCO to document the proceedings of RWG meetings, considering both the transparency and accountability benefits of such a requirement and the potential impact of a documentation requirement on free and open dialogue.

Barclays, et al., BlackRock, CCP12, CME, Nodal, OCC, Paolo Saguato, and SIFMA AMG generally supported the Commission's proposal to require a DCO to establish one or more RWGs. SIFMA AMG recommended that the Commission clarify that the matters required to be brought to the RWG are the same scope of matters to be brought to the RMC.

Cboe Digital, Eurex, ForecastEx, NADEX, and Nodal expressed concerns with the proposed requirement. Cboe Digital argued that requiring use of an RWG for a smaller DCO, or a DCO with a homogenous product offering, would be arbitrary, burdensome, and superfluous given the functions of the DCO's RMC. Eurex noted that proposed § 39.24(b)(12) is not harmonized with EMIR or EU Regulation 152/2013, which leave the establishment of further committees beyond the risk committee to the discretion of the CCP. Moreover, Eurex argued that the decision to establish additional committees or working groups beyond an RMC for the purposes of gathering risk-based input should be left to the discretion of the DCO. Eurex also stated that if the Commission chooses to adopt § 39.24(b)(12), it should allow DCOs to design their own policies and procedures regarding membership rotation. Nodal commented that the material difference between the RMC and the RWG is unclear and, therefore, questioned what additional risk management value is gained from requiring an RWG in addition to an RMC. NADEX stated that the proposed regulation should not be implemented because a DCO is in the best position to determine its governance needs based on its specific business and size. Moreover, it argued that it may be difficult for smaller DCOs to find

[22] The Commission notes that this concern seems most relevant to an RMC that is structured as a board-level committee.

members for a second committee beyond their RMC. ICE noted that it faces challenges in finding available resources at firms to engage in various committees and advisory roles given the resource constraints currently present in the industry, and argued that because the proposed rules create various additional overlapping opportunities for input such as the RMC and RWG, these limited resources may be further strained.

The Commission received several comments on the proposed requirement that each RWG convene at least quarterly. FIA and ISDA agreed with the proposed requirement, but CCP12, CME, Eurex, ICE, Nodal, OCC, and SIFMA AMG do not believe it is necessary for the Commission to prescribe a minimum frequency of RWG meetings. Nodal suggested that the Commission could revise proposed § 39.24(b)(12) to provide that the RWG shall be convened by the DCO prior to the DCO making changes that could materially affect the risk profile of the DCO. BlackRock stated that the Commission should require RWGs to meet bi-annually, or more frequently if warranted by the risk issues at the DCO.

The Commission also received several comments on whether the Commission should require DCOs to document the proceedings of RWG meetings. CME believes that requiring and publishing meeting minutes may chill open dialogue and impede progress on addressing risk issues. According to CME, a DCO should be able to determine whether to document RWG proceedings and, if so, the manner in which to do so. CCP12 believes that the Commission should only require a DCO to document the topics discussed by the RWG. SIFMA AMG stated that an RWG should be required to document its recommendations to the RMC or board, but not its discussions generally. ISDA stated that DCOs should document each RWG meeting because of the transparency and accountability benefits, and also to allow members of the group that miss a meeting to efficiently participate in the next meeting. ISDA further argued that a DCO could mitigate any potential impact on free and open dialogue by limiting the information in the meeting minutes to discussion topics and points that were made by participants, omitting the identity of those who made the points. According to ISDA, the minutes should also contain areas of disagreement and document any agreement or decision made on the discussed topics. FIA stated that it supports the requirement that a DCO document the proceedings of RWG meetings. FIA does not believe that such a requirement will chill discussion within the RWG, but instead will create a record of matters discussed and general feedback provided. Moreover, FIA believes that the Commission should require that this documentation be provided to the RMC as an input for consideration.

FIA believes that the firms represented on the RWG should provide risk-based feedback, but also that firms should be able to use this forum to provide views and feedback without being limited to the structural formality of the RMC. FIA views the RWG primarily as a forum to provide transparency to market participants and to allow them to engage in open dialogue so the DCO obtains the views of its members and their customers. BlackRock suggested that the role of the RWG could be further enhanced if RMCs were explicitly required to consider feedback from the RWG(s).

After considering the comments, the Commission is adopting § 39.24(b)(12) largely as proposed, but is revising it with respect to the required meeting frequency for RWGs and with respect to meeting documentation requirements discussed below. A requirement of a quarterly RWG meeting may be unduly burdensome for a DCO that is not confronted with issues materially affecting its risk profile that would require RWG consultation at a given time. It is also important, however, that an RWG hold regular meetings to ensure that it serves as a consistent forum for members to discuss and provide input on risk matters facing a DCO in a timely manner. As a result, the Commission is revising § 39.24(b)(12) to require that each RWG ''shall convene at least two times per year.''

In response to Nodal's questioning of the material differences between the RMC and the RWG, and the additional risk management value in requiring an RWG in addition to an RMC, the Commission continues to believe that establishing one or more RWGs will enhance a DCO's risk management by providing the DCO with an expanded pool of participants to seek input from when considering matters that could materially affect the risk profile of the DCO. Some participants with valuable risk management insight may be reluctant to serve on an RMC due to the time commitment involved and thus may prefer to serve on an RWG.

The Commission recognizes that a smaller DCO, in particular, may have a more difficult time finding participants to serve on its RWG, especially in light of RMC composition requirements, than a DCO with a larger membership. However, the Commission notes that a DCO with a smaller membership or a homogenous product offering will in most instances need fewer participants on its RWG to represent a diverse cross-section of its clearing members and customers of clearing members. The Commission further notes that it proposed and is adopting a flexible composition requirement for RWGs in order to allow DCOs to construct their RWGs in a manner that fits the DCO's membership composition and product offerings.

In response to a comment by SIFMA AMG, the Commission confirms that the matters required to be brought to the RWG, ''all matters that could materially affect the risk profile of the [DCO],'' are the same as those on which the board of directors must consult with the RMC. The Commission expects each DCO to define in its policies and procedures what it means to ''materially affect the risk profile of the DCO.''

In response to Eurex's comment on differences between § 39.24(b)(12) and European law, the Commission notes that the RWG requirement is not incompatible with EMIR or EU Regulation 152/2013, as described by Eurex, because nothing in EU Regulation 152/2013 prohibits a clearinghouse from establishing additional committees beyond the risk committee, including an RWG. The Commission confirms that § 39.24(b)(12) provides a DCO with the flexibility to design appropriate rotation policies for its RWG.

The Commission received several comments regarding whether it should require DCOs to document the proceedings of RWG meetings. In response to comments from CCP12, FIA, and ISDA arguing that an RWG documentation requirement would provide transparency and accountability benefits, the Commission is revising proposed § 39.24(b)(12) to add that a DCO must ''*include requirements for the [DCO] to document and provide to the risk management committee, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the risk advisory working group*'' (added text in italics) in the written policies and procedures required by proposed § 39.24(b)(12). The Commission believes that requiring a DCO to document and provide an RWG's feedback to the RMC will help ensure that the RWG's input is appropriately considered in the DCO's risk governance process. The Commission declines to add a requirement that RMCs consider feedback from an RWG, but recognizes the potential risk management benefits

of RMC and RWG collaboration, and expects that many DCOs will formalize this collaboration in their governance arrangements. The Commission believes, however, that this is an area where DCOs would benefit from the flexibility to structure their governance arrangements in a manner that best suits them.

III. Amendments to § 39.24(c)

A. Fitness Standards for RMC Members—§ 39.24(c)(1)

The Commission proposed to amend § 39.24(c) by adding new paragraph (c)(1)(iv) (and renumbering current paragraphs (c)(1)(iv) and (v) accordingly) to require a DCO to establish and enforce appropriate fitness standards for its RMC members.

BlackRock, Eurex, FIA, ICE, Paolo Saguato, and SIFMA AMG stated that they generally agree with the Commission's proposal to require a DCO to establish fitness standards for its RMC members. BlackRock noted that the material considered by RMC members will be specialized and will require a certain level of experience and skills. ICE agrees with allowing DCOs the flexibility to determine appropriate fitness standards for their RMC members. Eurex noted that the Commission's proposal would generally harmonize with Article 28(2) of EMIR. NADEX stated that it doesn't think there should be an RMC requirement, but if there is, then RMC members should have appropriate fitness standards. Finally, SIFMA AMG recommended that the Commission also require DCOs to establish and enforce fitness standards for its RWG members. The Commission did not receive any comments opposed to the proposed requirement.

The Commission continues to believe that proposed § 39.24(c)(1)(iv) is consistent with subsection (ii) of DCO Core Principle O, which requires a DCO to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCO, any other individual or entity with direct access to the settlement or clearing activities of the DCO, and any other party affiliated with any of the foregoing individuals or entities.[23] If a DCO is required to establish and consult with its RMC on all matters that could materially affect the risk profile of the DCO as proposed, the Commission believes a DCO also would need to consider the fitness of RMC members, recognizing that fitness standards may vary across DCOs. Therefore, the Commission is adopting § 39.24(c)(1)(iv) as proposed.

The Commission declines to adopt a requirement that a DCO establish fitness standards for its RWG members. The Commission expects that RWG(s) will be a critical component of a DCO's overall risk management framework by providing insight on risk matters from a broad array of market participants in a more open and less formal forum than an RMC, so that a larger group of market participants can participate. Accordingly, the Commission does not believe that it is appropriate to require DCOs to establish fitness standards for RWG members that could have the unintended effect of limiting the potential pool of RWG members.

B. Role of RMC Members—§ 39.24(c)(3)

Proposed § 39.24(c)(3) would require a DCO to maintain policies designed to enable its RMC members to provide independent, expert opinions in the form of risk-based input on all matters presented to the RMC for consideration, and perform their duties in a manner that supports the safety and efficiency of the DCO and the stability of the broader financial system. The Commission requested comment on whether requiring RMC members to act as independent experts, neither beholden to their employers' commercial interests nor acting as fiduciaries of the DCO, raises any potential legal issues for those members. The Commission asked whether, as a matter of corporate law, RMC members would be forced to contend with competing duties or obligations to the DCO and their employer, including any duties or obligations that would foreclose RMC participation, and if so, how the goal of receiving independent, expert opinions could be achieved. The Commission also asked whether DCOs should be required to have policies specific to RMC members for managing conflicts of interest.

Barclays, et al., BlackRock, CCP12, CME, ICE, ISDA, OCC, and SIFMA AMG generally supported proposed § 39.24(c)(3). CCP12 stated that it strongly believes that RMC members' participation in a DCO's governance arrangements must be contingent on the members acting in a manner that prioritizes the safety and efficiency of the DCO and the stability of the broader financial system. CCP12 also believes that an RMC member's obligations cannot be to the commercial interests of the member's employer, as the role of the RMC is to provided risk-based input on the matters that come before it.

CME, ICE, and OCC commented on the proposal's use of the term ''expert'' in the context of RMC members providing ''expert opinions.'' ICE stated that it would not support imposing an overly strict interpretation of what constitutes an ''expert'' (*e.g.,* required accreditation or certification requirements). CME and OCC stated that the Commission should substitute ''expert'' with ''informed'' as doing so would enable RMC members to provide independent and informed opinions in the form of risk-based input, without implicating the legal connotations that accompany the concept of ''expert opinions.'' CME went further to state that such a change would also prevent possible misinterpretation about whether the person providing the opinion must have a specific degree, certification, accreditation, or license to demonstrate the requisite expertise. CME noted that using the term ''informed'' instead of ''expert'' would also align the proposed requirement with a similar provision in the SEC Proposal that requires ''risk-based, independent, and informed'' opinion from RMC members.

Several commenters discussed the proposed requirement for a DCO to maintain policies designed to enable its RMC members to provide ''independent'' input on risk matters. ISDA stated that it is common practice that RMC members act not as representatives of their employer, but as independent experts. ISDA further stated that it is not aware that this practice has led to issues anywhere. Conversely, Cboe Digital, ForecastEx, and Nodal questioned the feasibility of ensuring that RMC members are able to provide independent input. Cboe Digital commented that while RMC members should be required to set aside commercial interest bias and provide only risk-based input, they will nonetheless likely possess a degree of implicit bias that cannot be untangled given the compensation paid by their employer. Cboe Digital also argued that the independence requirement is unnecessary because RMC members are already subject to a DCO's rules designed to minimize conflicts of interest in the decision-making process of the DCO established pursuant to § 39.25, must meet a DCO's fitness standards established pursuant to § 39.24(c), and must carry out their duties and responsibilities as prescribed by the committee's governing documents by applying their professional expertise through a risk-based lens. NADEX stated that while it believes that independent input is important when considering significant risk matters, policies requiring RMC

[23] *See* 7 U.S.C. 7a–1(c)(2)(O).

member independence are unnecessary if a board of directors contains one or more independent directors, because the board of directors has the ultimate responsibility to make major decisions. NADEX also argued that, if the Commission adopts the proposed requirement, DCO–DCM dual registrants should be exempt because Commission regulations permit DCMs to establish a board of directors comprised of at least 35 percent public directors with the same requirement applicable to executive committees.[24] Therefore, NADEX argued, dual-registered entities are already considering independent views in their decision-making. Nodal argued that it would be exceptionally difficult to obtain truly independent opinions on risk management matters from clearing members and customers because they are inherently conflicted. Nodal believes that the Commission should revise the proposed rules to allow DCOs to instead design policies focused on including RMC members who would qualify as ''public directors,'' as defined in the CEA. ForecastEx commented that the Commission should recognize the tie RMC members will have with their employers, and design a regulation with this connection in mind. SIFMA AMG stated that while RMC members' contributions reflect a risk-based, independent, and informed opinion, the Commission should explicitly require clearing members and clearing member customers to represent the perspectives of their employers.

In response to the Commission's request for comment on whether, as a matter of corporate law, RMC members would be forced to contend with competing duties or obligations to the DCO and their employer, NADEX stated that an RMC member's ability to waive their fiduciary duties to their employing firm would be dependent upon the company's legal entity type and its state of incorporation/organization, and cited recent legal authority from the Delaware Court of Chancery which, in the view of NADEX, decided that a stockholder of a Delaware corporation cannot waive claims against corporate directors for breach of fiduciary duties.[25] NADEX further argued that because the fiduciary laws of the state in which each DCO is organized may differ, the proposed independence requirement would not be able to be applied uniformly, and therefore should not be implemented. Cboe Digital stated that efforts to attempt to ensure RMC member independence could lead to costly legal disputes.

OCC noted that it has several board-level risk management committees, and that under general corporate law principles, directors on those committees necessarily are fiduciaries of the DCO. OCC argued that this fiduciary relationship does not cause a director to lose independence; in fact, OCC public directors, who otherwise are independent from OCC, are fiduciaries to OCC by virtue of their service as OCC directors. OCC requested that the Commission clarify that a director's fiduciary duty to the DCO does not render that director non-independent and does not violate proposed § 39.24(c)(3). Absent such a clarification, OCC contended, it may be impossible for a director of a DCO to serve on an RMC at all.

FIA commented that DCOs have governance specific to their corporate make-up that is governed by applicable corporate laws and that RMC members, as employees of their firm, may have certain duties to their employer. However, FIA does not think this raises any competing duties or obligations with RMC participation. FIA believes that an RMC's participant clearing members and customers are well-suited for risk input without requiring fiduciary obligations that may conflict with their individual employment.

In response to the Commission's request for comment on whether DCOs should be required to have policies specific to RMC members for managing conflicts of interest, CCP12 stated that while DCOs already implement policies that set out the role of the RMC and the duties of their members, which may also be supplemented by a requirement for members to sign non-disclosure agreements, a DCO should be afforded the flexibility to design its own policies for the governance arrangements of RMCs based on the DCO's own unique structure. FIA suggested that DCO policies and procedures specific to RMC members for managing conflicts of interest would help RMC members provide appropriate input. BlackRock stated that the Commission should require DCOs to specify in their policies and procedures that RMC members would not be serving as fiduciaries to the DCO, particularly when acting as a fiduciary to the DCO may conflict with the RMC's objective of supporting the stability of the broader financial system. Eurex noted that Article 28(4) of EMIR provides that the members of the risk committee are bound by confidentiality requirements, and that where the chairman of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member must not be allowed to vote on that matter. Eurex believes that the Commission could harmonize § 39.24(c)(3) with EU regulation and fulfill the same interest in ensuring that RMC members feel empowered to provide objective input by requiring that all RMC members be bound by confidentiality requirements, addressing the avoidance of conflicts of interest, and specifying that RMC members owe no fiduciary duties to DCOs. Eurex believes this would also reflect the best practices that DCOs already successfully have in place for RMCs.

After considering the comments, the Commission is adopting proposed § 39.24(c)(3) as modified below.

Proposed § 39.24(c)(3) would, in part, require a DCO to maintain policies designed to enable RMC members to provide ''independent, expert opinions in the form of risk-based input.'' As explained above, CME, ICC, and OCC argued that requiring an RMC member to provide an ''expert'' opinion could lead to a possible misinterpretation about whether the person providing the opinion must have specific credentials to demonstrate sufficient expertise. That was not the Commission's intention. Rather, the Commission is requiring RMC members to have pre-existing risk management knowledge. Therefore, the Commission is adopting § 39.24(c)(3) with the term ''expert'' replaced by ''informed.'' The Commission also notes that this change will harmonize § 39.24(c)(3) with a similar provision in the SEC Proposal.[26]

In light of the confusion seen in some comments regarding the Commission's use of the term ''independent'' in proposed § 39.24(c)(3), the Commission is adopting § 39.24(c)(3) without that term. The Commission's use of the term ''independent'' referred to the ability of an RMC member to provide risk-based input while serving on an RMC, rather than input motivated by the commercial interests of the member's employer. Because a DCO would still be required to maintain policies designed to enable members of the RMC to provide risk-based input in the absence of that term, the Commission believes this modification will avoid potential further confusion while preserving the substance of the requirement as proposed. The Commission nevertheless

[24] *See* Guidance on, and Acceptable Practices in, Compliance with Core Principles, 17 CFR 38, appendix B, Core Principle 16, section (b)(2). The composition NADEX cites is an ''acceptable practice'' rather than a strict requirement. *See* Appendix B section 2.

[25] *See Manti Holdings, LLC* v. *The Carlyle Group, Inc.,* 2022 WL 444272 (Del. Ch. Feb. 14, 2022).

[26] *See supra* n.9, at p. 73 (proposed rule 17Ad–25(d)(2)).

notes that its use of the term ''independent'' in the Proposal did not refer to, as some commenters appeared to suggest, the same concept as board member independence, which focuses on ensuring that a board includes members who are not an executive, officer, or employee of the DCO or an affiliate thereof. The Commission believes that both types of independence are important to effective risk governance, but they are distinct concepts. Therefore, the Commission disagrees with NADEX's suggestion that RMC member independence is unnecessary if a board of directors contains one or more independent directors. Moreover, the Commission disagrees with comments questioning the feasibility of an RMC member providing independent input in light of the compensation paid to the RMC member by its employer. In the Commission's experience, it is common practice that RMC members provide effective risk-based input directed at the safety of the DCO.

In discussing the concept of RMC member independence, the Proposal noted that RMC members should be neither beholden to their employers' particular interests nor acting as a fiduciary of the DCO.[27] ICE and OCC noted that some RMCs operate as board-level committees, with RMC members who are also members of the board, and thus have legal fiduciary duties to the DCO. Moreover, some DCOs include key members of management on an RMC, such as the DCO's president or chief risk officer. Board members and DCO management can be valuable contributors to an RMC, and the Commission wants to be clear that § 39.24(c)(3) does not prevent individuals with legal fiduciary duties to the DCO from serving on an RMC. For the purposes of § 39.24, RMC members do not have fiduciary duties to the DCO by virtue of their participation on an RMC, and a given member's legal fiduciary duties to the DCO based on a role as a director or officer of the DCO are not inconsistent with the role of an RMC member. The DCO itself is legally obligated to prioritize its own safety, and to support the stability of the broader financial system and other relevant public interest considerations.[28]

The Commission received several responses to its request for comment on whether, as a matter of corporate law, RMC members would be forced to contend with competing duties or obligations to the DCO and their employer, and the related matter of whether DCOs should be required to have policies specific to RMC members for managing conflicts of interest. NADEX appears to believe that participation on an RMC could require RMC members to waive their fiduciary obligations to their employing firms, but the Commission notes that this is not the case for purposes of § 39.24. The Commission also does not believe that potential variance in fiduciary laws across states presents an issue for RMC participation. In response to Cboe Digital's argument that efforts to attempt to ensure RMC members are independent to an extent that eliminates all bias, even implicit bias, favoring the commercial interests of the RMC member's employer could lead to costly legal disputes, the Commission notes that neither the proposed nor the final rule requires that degree of independence. Rather, the focus is on the fact that each RMC member's input, and the input of the RMC as a whole, should be risk-based, and focused on the safety of the DCO, the stability of the broader financial system, and other public interest considerations.

The Commission believes that RMC members are able to manage conflicts of interest pursuant to the policies and procedures DCOs will adopt to comply with new § 39.24(c)(3), as well as DCOs' existing conflict of interest obligations under § 39.25. As suggested by FIA, these policies may include procedures for RMC members to recuse themselves in certain circumstances where there is a conflict of interest or the appearance of a conflict of interest, such as where the interests of the RMC member's employer are affected in a manner distinct from the interests of other clearing members or other clients (*e.g.,* where DCO staff is proposing action against the clearing member that employs the RMC member). Also, as CCP12 suggested, a DCO may choose to require RMC members to sign non-disclosure agreements, as many currently do. Ultimately, the Commission believes, as suggested by CCP12, that a DCO should be afforded the flexibility to design its policies in this area based on the DCO's structure and concerns.

IV. Additional Comments

The Commission in the Proposal also requested comment on the following topics which might be address in a future rulemaking: (1) whether the Commission should require a DCO to consult with a broad spectrum of market participants prior to submitting any rule change pursuant to §§ 40.5, 40.6, or 40.10; and (2) whether the Commission should require a DCO to maintain policies and procedures designed to enable an RMC member to share certain types of information it learns in its capacity as an RMC member with fellow employees in order to obtain additional expert opinion. The Commission appreciates the comments it received on these topics, and while they are not discussed here because they were outside the scope of the Proposal, the Commission may address them in a future rulemaking.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[29] The final rule adopted by the Commission will affect only DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[30] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[31] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the regulations adopted herein will not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the proposed rulemaking, and the Commission did not receive any comments on the RFA.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[32] provides that Federal agencies, including the Commission, may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Office of Management and Budget (OMB). This final rule contains reporting and recordkeeping requirements that are collections of information within the meaning of the PRA. As the Commission noted in the Proposal, the reporting burden estimate for ''Requirements for Derivatives Clearing Organizations,''

[27] 87 FR 49561–62.

[28] 17 CFR 39.24(a)(1)(iii), (iv).

[29] 5 U.S.C. 601 *et seq.*

[30] 47 FR 18618 (Apr. 30, 1982).

[31] *See* 66 FR 45604, 45609 (Aug. 29, 2001).

[32] 44 U.S.C. 3501 *et seq.*

OMB control number 3038–0076,[33] accounted for the disclosure of new and updated governance arrangements required under § 39.24 to the Commission, other relevant authorities, clearing members and their customers, owners of the DCO, and the public.[34] The Commission requested comments regarding its PRA burden analysis in the preamble to the Proposal, but did not receive any responses.

The Commission is making the following modifications to the Proposal in response to other comments: the Commission is adopting new § 39.24(d) to provide that a DCO may satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) of § 39.24 by having rules that permit it to clear only fully collateralized positions; the Commission is revising proposed § 39.24(b)(11) to require a DCO to create and maintain minutes of each RMC meeting; the Commission is revising proposed § 39.24(b)(11) to clarify that a DCO's board must consult with, and consider and respond to input from, the RMC on the clearing of new products that could materially affect the risk profile of the DCO; the Commission is modifying proposed § 39.24(b)(11)(ii) to clarify that the rule requires a DCO to maintain written policies and procedures to make certain that its RMC includes at least two clearing member representatives and, if applicable, at least two representatives of customers of clearing members; the Commission is revising proposed § 39.24(b)(12) to require a DCO to include in its written policies and procedures related to the formation and role of each RWG requirements for the DCO to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG; the Commission is revising § 39.24(b)(12) to require each RWG to meet at least two times per year, rather than quarterly, as originally proposed; and the Commission is revising proposed § 39.24(c)(3) to replace the term ''expert'' with ''informed'' and to remove the term ''independent.''

The Commission is revising its burden estimate for OMB control number 3038–0076 to account for modifications to the Proposal made in response to comments. Specifically, the Commission believes that the burden will increase because DCOs will be required under § 39.24(b)(11) to create and maintain minutes of each RMC meeting, and under § 39.24(b)(12) to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG. The Commission estimates a DCO will spend an average of four hours creating minutes of each RMC meeting and four hours documenting a summary of the topics discussed and the main points raised during each meeting of the RWG, which includes attending the meeting, taking notes, and putting the notes into the required format following the meeting. The Commission estimates that a DCO's RMC and RWG will each need to hold an average of six meetings per year to satisfy the § 39.24(b)(11) and (12) requirements that a DCO's RMC and RWG address all matters that could materially affect the risk profile of the DCO. Therefore, as a result of the modifications, the revised estimated aggregate burden is as follows:

Estimated number of respondents: 15.[35]

Estimated number of reports per respondent: 18.[36]

Average number of hours per report: 4.

Estimated gross annual reporting burden: 1,080.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[37] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five specific considerations identified in Section 15(a) of the CEA (collectively referred to herein as Section 15(a) factors) addressed below.

The Commission recognizes that the final rule may impose costs. The Commission has endeavored to assess the expected costs and benefits of the final rule in quantitative terms, including PRA-related costs, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable rules in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the final rule. Additionally, any initial and recurring compliance costs for any particular DCO will depend on the size, existing infrastructure, practices, and cost structure of the DCO.

To further the Commission's consideration of the costs and benefits imposed by the Proposal, the Commission invited comments from the public on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed by the Commission; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission did not receive any comments specific to the benefits and costs of the proposed changes to § 39.24. To the extent that the Commission received comments that indirectly address the costs and benefits of the Proposal, those comments are discussed as relevant below.

As outlined above in Section V.B., the Commission made several modifications in response to comments on the Proposal. The Commission believes that the amendments to current § 39.24 may result in some additional costs to DCOs as compared to current § 39.24.

2. Baseline

The baseline for the Commission's consideration of the costs and benefits of this final rule is: (1) the DCO Core Principles set forth in Section 5b(c)(2) of the CEA; and (2) § 39.24. DCO Core Principle O requires a DCO to establish governance arrangements that are transparent, to fulfill public interest requirements and to permit the consideration of the views of owners and participants, and § 39.24 implements DCO Core Principle O. Of the fifteen DCOs currently registered with the Commission, twelve already have some form of an RMC, which may have been intended, in part, to fulfill the DCO's compliance obligations under DCO Core Principle O and § 39.24. Of

[33] *See* Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800, 4831 (Jan. 27, 2020).

[34] *See* 17 CFR 39.24(b)(2).

[35] The Commission notes that while new § 39.24(d) provides that a DCO may satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) by having rules that permit it to clear only fully collateralized positions, such DCOs are included in the total estimated number of respondents because these DCOs would still be required to develop and disclose governance arrangements required by the other provisions of § 39.24. The Commission's estimate is therefore conservative to the extent that these DCOs are not required to prepare and maintain minutes of each RMC meeting, and document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

[36] The Commission notes that the previous estimated aggregate burden was six reports. As described above, the commission is proposing 12 new reports, bringing the total to 18 reports. *See supra* n. 31.

[37] 7 U.S.C. 19(a).

the fifteen DCOs currently registered with the Commission, six already have some form of an RWG, which may have been intended, in part, to fulfill the DCO's compliance obligations under DCO Core Principle O and § 39.24. The Commission recognizes that, to the extent that DCOs already have in place some form of the proposed governance arrangements, the actual costs and benefits of the proposed regulation may not be significant.

3. Amendments to § 39.24

a. Summary of the Final Rule

The Commission is adopting regulations that require each DCO to establish an RMC and require a DCO's board of directors to consult with, and consider and respond to input from, the RMC on all matters that could materially affect the DCO's risk profile. The final rule also requires DCOs to: establish fitness standards for RMC members; maintain policies to ensure each RMC includes at least two clearing member representatives and, if applicable, at least two representatives of customers of clearing members; maintain policies that require rotation of the membership of each RMC on a regular basis; and maintain written policies and procedures regarding the RMC consultation process that include requirements for the DCO to document the board's consideration of and response to RMC input and create and maintain minutes of each RMC meeting. In addition, the final rule requires each DCO to maintain policies enabling RMC members to provide informed opinions in the form of risk-based input to the RMC, and to perform their duties in a manner that supports the DCO's safety and efficiency and the stability of the broader financial system.

The final rule further requires each DCO to establish one or more RWGs as a forum to seek risk-based input from a broad array of market participants, such that a diverse cross-section of the DCO's clearing members and customers of clearing members are represented, regarding all matters that could materially affect the risk profile of the DCO. RWGs will be required to convene at least two times per year. In addition, the final rule requires each DCO to adopt written policies and procedures related to the formation and role of the RWG and include requirements for the DCO to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

Finally, the Commission is adopting new § 39.24(d) to allow a DCO to alternatively satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) of § 39.24 by having rules that permit it to clear only fully collateralized positions.

b. Benefits

The Commission believes that § 39.24, as amended by this final rule, will promote more efficient, effective, and reliable DCO risk management, benefitting DCOs, clearing members, market participants, and the financial system more broadly. RMCs will provide a formal mechanism for DCOs to receive valuable input from market participants on critical issues including the DCO's margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products that could materially impact the DCO's risk profile. Moreover, codifying the requirement that a DCO's board of directors consult with, and consider and respond to input from, market participants on an RMC will formalize a widely-used method for engaging market participants in the risk governance process. This will allow DCOs to more effectively consider and address risks impacting DCO stability, market participant stability, and market resilience.

To the extent that some DCOs already have RMCs that are compliant or partially compliant with this final rule, the benefits of the regulations are currently being realized to some degree.

The final rule will help RMCs to be well positioned to provide effective risk management input to the DCO's board of directors by requiring DCOs to establish RMC membership fitness standards. These standards will help to ensure that individual RMC members are appropriately qualified to perform their duties. Ensuring that RMCs include at least two clearing member representatives and, if applicable, at least two representatives of customers of clearing members will give DCOs the benefit of these stakeholders' perspectives on risk management issues, and gives market participants the benefit of a forum for conveying their input on risk management issues. Rotating the membership of the RMCs on a regular basis will promote a diversity of perspectives. In addition, requiring DCOs to implement policies enabling RMC members to provide informed opinions in the form of risk-based input, and to perform their duties in a manner that supports the DCO's safety and efficiency, will help ensure that RMC members feel empowered to provide objective input during this process. These requirements for RMCs and their members collectively increase the likelihood of effective DCO risk management. Finally, requiring DCOs to develop and maintain policies and procedures governing DCO board of directors consultation with its RMC(s), and to document the activities of its RMC(s), will promote transparency, accountability, and predictability, and facilitate effective oversight by the Commission in this area. After considering a comment from BlackRock arguing that keeping RMC minutes is necessary to promote transparency, accountability, and predictability, and comments from FIA, ISDA, and NADEX that also supported the requirement, the Commission revised proposed § 39.24(b)(11) to require a DCO to create and maintain minutes of each RMC meeting.

The requirement that each DCO establish one or more RWGs will further increase the likelihood of effective DCO risk management by providing each DCO with an expanded pool of clearing member and customer of clearing member representatives to consult when considering matters that could materially affect the risk profile of the DCO. Requiring DCOs to maintain written policies and procedures related to the formation and role of each RWG will promote transparency, accountability, and predictability. After considering comments from CCP12, FIA, and ISDA arguing that an RWG documentation requirement would provide transparency and accountability benefits, the Commission revised proposed § 39.24(b)(12) to require a DCO to include in the written policies and procedures related to the formation and role of each RWG a requirement that the DCO document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

c. Costs

To the extent that some DCOs do not already have RMCs or would need to adjust the policies and procedures of their existing RMCs to comply with the amendments to § 39.24, the final rule may impose some additional costs on DCOs. Costs could arise from additional hours a DCO's employees (or potentially outside counsel or other consultants) might need to spend conforming the DCO's rules and procedures to these requirements, drafting new or amended rules and procedures when necessary, and implementing these rules and procedures. Specifically, a DCO must draft written policies and procedures that describe the RMC consultation process in detail and that enable RMC members to provide informed opinions in the form of risk-based input on all

matters presented to the RMC for consideration and perform their duties in a manner that supports the safety and efficiency of the DCO and the stability of the broader financial system. In addition, a DCO must document the board's consideration of and response to RMC input, prepare minutes of each RMC meeting, and summarize the topics discussed and main points raised during each RWG meeting. A DCO will also be required to host RMC and RWG meetings as often as is necessary to address all matters that could materially affect the risk profile of the DCO, and with respect to RWGs, at least two times per year.

As noted above, twelve of the fifteen DCOs currently registered with the Commission already have RMCs in place in some form, which may lower the cost of implementing the final rule. Further, the DCOs' policies implementing the final rule will likely not change significantly from year to year, so after the initial creation of the policies, the time required to create rules and procedures would be minimal.

Ongoing compliance with the final rule will also impose costs. Establishing and maintaining an RMC will cost a DCO time to identify potential RMC members that meet the fitness standards when the RMC is initially formed, as well as each time the RMC membership is rotated. ICE stated that requirements on the rotation of RMC members may impose a significant burden on market participants to supply appropriately experienced, knowledgeable, and available employees to participate on the RMCs. However, the Commission notes that market participants will not be required to participate on the RMC, and the Commission believes that the benefits of being able to provide input will outweigh the costs for those that do participate.

Operation of the RMC would require a DCO to provide information to the RMC as needed for its consideration, and time for the DCO's board to consult with the RMC and consider and respond to its input. An RMC's operation would also require time from its members to consider relevant information regarding the DCO's risk practices, and to form and deliver its views. These costs would, however, be dispersed among different participants over time due to the proposed requirement that DCOs rotate their RMC members regularly.

d. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendments to § 39.24 in light of the following five broad areas of market and public concern identified in Section 15(a) of the CEA: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission believes that the final rule will have a beneficial effect on sound risk management practices and on the protection of market participants and the public.

(1) *Protection of market participants and the public:* The Commission believes that the final rule will enhance the protection of market participants and the public by improving DCOs' identification and handling of risk and reducing the likelihood that market participants and the public face unexpected costs resulting from deficient DCO risk management. The final rule also gives market participants a voice in DCO risk management matters through their participation in RMCs and RWGs, increasing the likelihood that risks to market participants are adequately considered and minimized.

(2) *Efficiency, competitiveness, and financial integrity of futures markets:* The final rule will benefit the financial integrity of the markets for futures and cleared swaps, and options thereon, by promoting sound risk management decisions through the adoption of minimum requirements regarding the substance and form of a DCO's governance arrangements. The Commission has not identified any other effect of the final rule on efficiency, competitiveness, and financial integrity.

(3) *Price discovery:* The Commission has not identified any effect of the final rule on price discovery.

(4) *Sound risk management practices:* The final rule is designed to support sound risk management practices at DCOs by providing a forum for informed risk-based input to a DCO's board of directors from clearing members and customers of clearing members. Requirements regarding RMC composition, fitness standards for RMC members, and RMC membership rotation all support RMCs' purpose of promoting sound risk management practices. In addition, the requirement that a DCO establish one or more RWGs is designed to further expand and diversify the information available to a DCO while making material risk decisions, and to expand opportunities for those with a stake in DCO risk management to provide input, which further promotes sound risk management.

(5) *Other public interest considerations:* The Commission has not identified any effect of the final rule on other public interest considerations.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[38]

The Commission believes that the public interest to be protected by the antitrust laws is the promotion of competition. In the Proposal, the Commission requested comment on whether: (1) the proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws; (2) the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are; and (3) whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rule amendments. The Commission received one comment, from ISDA, stating that the proposed rules were not anticompetitive.

The Commission has considered the final rule to determine whether it is anticompetitive and has identified no anticompetitive effects. Because the Commission has determined that the rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 39

Governance requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 6(c), 7a–1, and 12a(5); 12 U.S.C. 5464; 15 U.S.C. 8325; Section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, title VII, sec. 752, July 21, 2010, 124 Stat. 1749.

■ 2. Amend § 39.24 as follows:

■ a. Revise paragraphs (b)(9) and (10)(iii);

■ b. Add paragraphs (b)(11) and (12);

[38] 7 U.S.C. 19(b).

■ c. Redesignate paragraphs (c)(1)(iv) and (v) as paragraphs (c)(1)(v) and (vi) and add new paragraph (c)(1)(iv); and
■ d. Add paragraphs (c)(3) and (d).

The revisions and additions read as follows:

§ 39.24 Governance.

* * * * *

(b) * * *

(9) Assign responsibility and accountability for risk decisions, including in crises and emergencies;

(10) * * *

(iii) Recovery and wind-down plans required by § 39.39, as applicable;

(11) Establish one or more risk management committees and require the board of directors to consult with, and consider and respond to input from, the risk management committee(s) on all matters that could materially affect the risk profile of the derivatives clearing organization, including any material change to the derivatives clearing organization's margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products that could materially affect the risk profile of the derivatives clearing organization. A derivatives clearing organization shall maintain written policies and procedures to make certain that:

(i) The risk management committee consultation process is described in detail, and includes requirements for the derivatives clearing organization to document the board's consideration of and response to risk management committee input and create and maintain minutes of each risk management committee meeting;

(ii) A risk management committee includes at least two clearing member representatives and, if applicable, at least two representatives of customers of clearing members; and

(iii) Membership of a risk management committee is rotated on a regular basis; and

(12) Establish one or more market participant risk advisory working groups as a forum to seek risk-based input from a broad array of market participants, such that a diverse cross-section of the derivatives clearing organization's clearing members and customers of clearing members are represented, regarding all matters that could materially affect the risk profile of the derivatives clearing organization. A derivatives clearing organization shall maintain written policies and procedures related to the formation and role of each risk advisory working group, and include requirements for the derivatives clearing organization to document and provide to the risk management committee, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the risk advisory working group. Each market participant risk advisory working group shall convene at least two times per year.

(c) * * *

(1) * * *

(iv) Members of risk management committee(s);

* * * * *

(3) A derivatives clearing organization shall maintain policies designed to enable members of risk management committee(s) to provide informed opinions in the form of risk-based input on all matters presented to the risk management committee for consideration, and perform their duties in a manner that supports the safety and efficiency of the derivatives clearing organization and the stability of the broader financial system.

(d) *Fully collateralized positions.* A derivatives clearing organization may satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) of this section by having rules that permit it to clear only fully collateralized positions.

Issued in Washington, DC, on July 3, 2023, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Governance Requirements for Derivatives Clearing Organizations—Commission Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

Today the Commission considered a final rule on Governance Requirements for Derivatives Clearing Organizations (DCOs). As I highlighted in remarks earlier this year, ''[t]his particular rulemaking has a long history, and its timing could not be more crucial.'' [1] Throughout my CFTC tenure, clearinghouse or central counterparty (CCP) governance has remained a topic of increasing emphasis among domestic and international regulators. In the decade that followed the initial rule proposal addressing DCO governance,[2] clearing members continually expressed concerns that their interests may not be adequately represented, considering that clearing members, through mutualized default funds, are the bearers of a majority of a CCP's tail risk.

Under my sponsorship, the CFTC's Market Risk Advisory Committee (MRAC) formed a Central Counterparty Risk and Governance Subcommittee to bring DCOs, clearing members, and customers together to make recommendations to the full MRAC and ultimately, the Commission, as to how they, the stakeholders, believed DCO governance could be improved.[3] That Subcommittee understood the assignment. I hope that the completion of this rulemaking serves as a model of how the Commission and the public (through advisory committees and other means) can work together towards effective and attainable solutions.

I fully support the final rule which facilitates further cooperation and collaboration through risk management committees including representation from clearing members and customers and through risk advisory working groups, which will give *all* clearing members and customers—not just those on the risk management committee—an opportunity to have their voices heard on risk management issues which impact them, not just the DCO. While there may be more to come in this area, today's final DCO Governance rule promotes the safety and soundness of our DCOs and the financial system at large. I hope that this final rule encourages the industry and other stakeholders to continue to work on those issues where, so far, they have not reached consensus. That said, transparent and honest communication is a cornerstone to the success of any system. I am hopeful that this governance rule will establish a new, enhanced level of communication among participants in the clearing ecosystem that will serve to bridge differences in multiple areas of disagreement, ultimately strengthening our financial markets, which I know is a shared interest.

Appendix 3—Statement of Support of Commissioner Kristin N. Johnson

I support the Commission's approval of the final rule adopting derivatives clearing organization (DCO) governance measures that establish structural and procedural mechanisms designed to improve efforts to identify and mitigate material risks, strengthen DCO resilience, and foster the integrity of our markets.

[1] Rostin Behnam, Chairman, CFTC, Keynote Address of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting (Feb. 3, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam31.*

[2] Governance requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest, 76 FR 722 (proposed Jan 6, 2011), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2010-31898a.pdf.*

[3] MRAC CCP Risk and Governance Subcommittee, Recommendations on CCP Governance and Summary of Subcommittee Constituent Perspectives, (MRAC approved Feb. 23, 2021), *available at https://www.cftc.gov/About/AdvisoryCommittees/MRAC.*

DCOs provide comprehensive settlement services and take on counterparty risk with the assistance of clearing members to facilitate centralized and over-the-counter trading. DCOs also stand as final guarantors of performance in the event of a customer and clearing member default. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] introduced groundbreaking reforms that shifted significant volumes of derivatives trading to clear through DCOs, giving them a key role in maintaining the stability and integrity of the derivatives markets through comprehensive and prudent risk mitigation practices. These practices include securely handling participant funds and assets, developing and administering robust forward-looking margining frameworks for idiosyncratic markets, consistently setting appropriate margin levels for trader portfolios, and collecting risk-based guaranty fund contributions from clearing members. DCO risk mitigation practices can profoundly impact individual firms and, depending on the systemic importance of a given DCO, the broader financial market.

The rules adopted today arise out of recommendations that the Commission received from the Central Counterparty (CCP) Risk and Governance Subcommittee (Subcommittee) of the Market Risk Advisory Committee (MRAC), which I sponsor.[2] The final rule requires DCOs to standup risk management committees (RMCs) comprised of clearing members and their customers to leverage their risk management expertise and formalize the role of market participants in the DCO governance process pursuant to DCO Core Principles.[3] The final rule also requires DCOs to establish separate Risk Advisory Working Groups (RWGs) that would be larger than the RMCs and intended to seek risk-based input from a broad array of market participants. The different membership and purpose of the RMC and the RWG will enhance a DCO's risk management, and the flexibility allowed by the final rule as to implementation will allow DCOs to structure these groups in the ways best suited to their structure, size, and product offerings.

This rule was initially proposed on August 11, 2022, with a comment period that closed on October 11, 2022.[4] Eighteen comments were submitted, addressing a range of questions posed in the proposed rulemaking and other points. I specifically want to address one of the issues raised by the commenters.

Commenters expressed concerns regarding the potential for conflicts of interest by RMC members arising out of potential tension between their duties to their employers versus their role as an RMC member.[5] There is of course a certain inherent divergence of views that is associated with requiring RMCs to have a diverse membership, but I find that any accompanying conflict arising out of that divergence can be managed by the DCO through application of appropriate policies and procedures, recognizing that RMC members are intended to give their best, informed opinion of risk-related issues considering the particular context in which they sit. I also agree with the view expressed by the Futures Industry Association that RMC policies and procedures may include procedures for an RMC member to recuse herself or himself in circumstances where there is an actual or apparent conflict of interest.

The Dodd-Frank Act prominently entrusts DCOs with maintaining the integrity of the derivatives markets through risk mitigation practices that can profoundly impact individual firms and the broader financial market. The Dodd-Frank Act amendments to the Commodity Exchange Act also expressly direct each DCO to establish governance arrangements that internalize the views of participants. I believe that the rules we adopt today effectively accomplish the articulated goals of making our markets safer and more resilient, and will enhance a DCO's ability to prudently manage risk. I thank staff in the Division of Clearing and Risk for their efforts, and also thank all of the entities and organizations that submitted comments to assist the Commission in achieving the best outcome with this rulemaking.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

Transparency, accountability, predictability, and effective Commission oversight—these are the public interests that I wrote last summer in the description of our proposed governance rule. These public interests are foundational to clearinghouse resilience. They remind us that the impact of market disruptions and stress is felt the hardest by farmers, ranchers, and producers, who face rising inputs, and hardworking American families who may have to pay more to feed their family, drive their car, or cool and heat their homes.

Commodity and derivatives markets have faced unexpected global challenges and disruptions over the last few years. Some were unexpected, hopefully once-in-a-lifetime events, like the pandemic and Russia's war against Ukraine. Others, like climate disasters and cybercrime, have been building for years, and we should expect that markets will continue to grapple with them indefinitely.

As I said at a Global Markets Advisory Committee meeting, ''We have arrived at a time when we should expect the unexpected. By expecting the unexpected, exchanges, clearinghouses, intermediaries, the Commission, and others can prepare a game plan for future market challenges—a game plan that holds the lessons of past disruptions, but also has the flexibility to adapt to new challenges. There is great benefit to clear heads planning now. . . . [C]omplex issues impacting global derivatives markets would benefit from forward thinking. Working through them now with clear heads and the benefit of time can lead to a workable game plan that will keep markets functioning well during times of stress.'' [1]

The best game plan comes from engagement and collaboration between all stakeholders, specifically here, clearinghouses, their members, and market participants. Under the rule, the Commission would require a clearinghouse to consult with, consider, and respond *on the merits* to substantive input from, a risk management committee made up of clearing members. This consultation would be required for *all* matters that could materially affect the risk profile of the clearinghouse. Clearinghouses will also be required to establish a risk advisory working group to consider input from an even broader array of market participants.

Together, clearinghouses, their members, and market participants, can benefit from a 360 degree view of risk, and make a powerful force in developing a workable game plan to keep markets functioning well during times of stress. The rule balances ensuring members' voices are adequately heard in a meaningful way, with the critical public service perspective of clearinghouses. The rule recognizes strength in numbers and diversity of opinion.

There are several enhancements that I advanced in the proposed rule after speaking to many stakeholders.[2] These enhancements are in addition to recommendations made by the Market Risk Advisory Committee (''MRAC'') in early 2021, after the pandemic, but prior to unprecedented levels of volatility and high prices triggered by Russia's war against Ukraine. I am grateful for MRAC members who contributed, stakeholders who shared their views with me, and for the staff who worked with me. I was pleased to see that the enhancements I advanced were substantially supported by public comment and are included in the final rule.

In particular, I advanced requirements for a clearinghouse to maintain written policies

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, title VII (July 21, 2010) (codified in relevant part at 7 U.S.C. 7a–1).

[2] *See* Report of the Central Counterparty Risk and Governance Subcommittee (Report), Market Risk Advisory Committee of the Commodity Futures Trading Commission (Feb. 23, 2021).

[3] DCO Core Principles O (Governance Fitness Standards), P (Conflicts of Interest), and Q (Composition of Governing Boards) collectively address governance requirements related to considering the views of owners and participants, adopting appropriate fitness standards for directors and others, minimizing and resolving conflicts of interest in decision-making, and including market participants on governing boards or committees. *See* 7 U.S.C. 7a–1(c)(2)(O), (P), and (Q). DCO Core Principle O expressly directs each DCO to establish governance arrangements that ''permit the consideration of the view of owners and participants.''

[4] *See* Governance Requirements for Derivatives Clearing Organizations, 87 FR 49559 (Aug. 11, 2022); *see also* Statement of Commissioner Kristin N. Johnson in Support of Proposed Rulemaking to Strengthen DCO Governance, July 27, 2022, *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722b.*

[5] *See* § 39.24(c)(3).

[1] CFTC Commissioner Christy Goldsmith Romero, *Expect the Unexpected in Global Markets,* (Feb. 13, 2023) *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement021323.*

[2] CFTC Commissioner Christy Goldsmith Romero, *Statement of Commissioner Christy Goldsmith Romero Regarding the Proposal to Strengthen the Resilience of Clearinghouses to Future Risk,* (July 27, 2022) *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement072722.*

and procedures: (1) describing in detail the consultation process between a clearinghouse and its risk management committee, including for deciding which matters could materially affect the clearinghouse's risk profile; and (2) governing the role of members of the risk management committee and risk working group including addressing any conflicts of interest. I also advanced the requirements for a clearinghouse to document: (1) the meetings of the risk management committee and risk working group; and (2) the clearinghouse's consideration of, and response to, the input of the risk management committee. I also advanced requirements for regular periodic meetings of the risk working group. I thank all who provided comments supporting these enhancements. I am thrilled to see them adopted in the final rule.

My intent in including requirements for written policies and procedures, accompanied by documentation, was to ensure that our rule met the public's interest. Drawing on my experience as a former Inspector General, I have witnessed time and time again that requirements for policies and procedures as well as documentation promote transparency, accountability, and predictability, and facilitate effective Commission oversight.

Policies and procedures help ensure that a game plan on how matters that could materially impact a clearinghouse's risk profile will be assessed, and who will have a say, are made now, not during times of market disruption. Requirements for policies, procedures, and documentation also promote consistency over the full range of clearinghouses, and may lead to best practices. This includes systemically significant clearinghouses and other well established clearinghouses who may already meet some or all of these requirements. It also includes new or future entrants, including in the digital asset space, who may not have a history of risk management committees, the consideration of input from clearing members, or policies, procedures or documentation requirements. I remain hopeful that these requirements will serve as a launch pad towards best practices that promote the public's interest in transparency, accountability, predictability, and effective oversight.

For these reasons, I support the final rule.

Appendix 5—Statement of Support of Commissioner Caroline D. Pham

As I've said before, one of the many proud traditions at the Commodity Futures Trading Commission (Commission or CFTC) is that Commissioners get to sponsor advisory committees comprised of members of the public to provide expert advice and input.[1] The Final Rule on Governance Requirements for Derivatives Clearing Organizations (DCOs) had its roots in recommendations made by the Central Counterparty (CCP) Risk and Governance Subcommittee (Subcommittee) of the Market Risk Advisory Committee (MRAC) when then-Commissioner Behnam chaired the MRAC in 2021.[2] I commend Chairman Behnam for his leadership of the MRAC at that time, and providing an example of how the industry can come together to propose workable solutions to issues in our markets through the CFTC's advisory committees.

I support today's Final Rule on Governance Requirements for DCOs. I would like to sincerely thank the staff of the Division of Clearing and Risk (DCR) for their work over many years to address market participants' efforts to enhance CCP risk and governance and codify standards, in particular Clark Hutchison, Eileen Donovan, Tad Polley, and Joe Opron. I especially want to express my appreciation to DCR staff for working with me to address my concerns to provide regulatory clarity and not upend existing law or standards for corporations and corporate governance.

In response to the volatility and dislocations in our markets in recent years, CFTC staff have spent countless hours monitoring our registrants, making themselves available for updates, questions, and requests for guidance and relief under stressful circumstances.

At the same time, market participants have come together to identify issues that regulators and CCPs should consider to enhance financial stability. Notably, one group recommended enhancing governance practices to obtain and address input from a broader array of market participants on relevant risk issues to improve CCP resilience.[3]

Our markets—relied on for risk management and price discovery—have felt, yet ultimately withstood, the effects of the COVID–19 pandemic and the widespread disruptions it caused. While markets continue to experience volatility, stresses, and dislocations,[4] I am pleased that stakeholders are undertaking studies and analyses of the recent years and using data and observations from market participants to produce lessons learned that will serve as important guides for policymakers.

During all this, our DCOs have been a pillar of strength for the derivatives markets. As U.S. Representative Glenn ''GT'' Thompson, Chairman of the House Committee on Agriculture put it:

> [T]he strength of our derivatives markets should not be taken for granted. Building deep, liquid, and safe derivatives markets is the result of informed trade-offs and negotiated compromises between the needs of different market participants. It takes constant work to uncover, understand, and manage the risks that can develop. Widespread clearing is one reason for the success of our derivatives markets, despite the recent turmoil. Clearing provides access to essential risk management tools for hedgers and creates a safer financial system for all Americans. Our cleared markets perform so well due to the public servants and professionals who work every day to understand and manage market risks, both at the [CFTC] and across the derivatives industry[.] [5]

I'd like to echo Chairman Thompson's words and thank all the staff of the CFTC who ensure that our markets are safe and well-functioning, no matter what challenges we face.

Upholding a Principles-Based Framework for DCOs

Today, we are taking a forward-looking approach and adopting rules to strengthen our DCOs. I believe that one reason why our markets are resilient even during times of market stress is because our principles-based regulatory framework ensures that strong guardrails are in place, while giving our registered entities like DCOs flexibility to implement our Core Principles in a way that best fits their business and operating model. To put it another way—we are going to make sure that you build your house to code, but I'm not going to tell you what color to paint it.

It is my hope that the Final Rule on Governance Requirements for DCOs is consistent with that approach by not being overly prescriptive. The rule requires DCOs to establish and consult with one or more risk management committees (RMCs) that includes representatives of clearing members and customers of clearing members on matters that could materially affect the risk profile of the DCO. In addition, the rule requires DCOs to establish minimum requirements for RMC composition and rotation, and to establish and enforce fitness standards for RMC members. The rule also requires DCOs to maintain written policies

[1] *See* Opening Statement of Commissioner Caroline D. Pham before the Global Markets Advisory Committee Inaugural Meeting on February 13, 2023, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement021323.*

[2] *See* MRAC CCP Risk and Governance Subcommittee, Recommendations on CCP Governance and Summary of Subcommittee Constituent Perspectives, available at *https://www.cftc.gov/media/6201/MRAC_CCPRGS_RCCOG022321/download* (Feb. 23, 2021).

[3] *See* A Path Forward for CCP Resilience, Recovery, and Resolution (Mar. 10, 2020), *https://www.jpmorgan.com/content/dam/jpm/cib/complex/content/news/a-path-forward-for-ccp-resilience-recovery-and-resolution/pdf-0.pdf.*

[4] For instance, Treasury Secretary Yellen recently warned of market stress associated with the U.S. debt limit negotiations. *See* Christopher Condon, Yellen Says Treasury Pushing for Debt-Limit Deal, Not Prepping for Default, Bloomberg, (May 24, 2023), available at *https://www.bloomberg.com/news/articles/2023-05-24/yellen-says-treasury-pushing-for-deal-not-prepping-for-default#xj4y7vzkg.* The European Central Bank has described the eurozone's financial stability status as ''fragile.'' *See* Hannah Brenton, ECB warns of 'fragile' financial stability after US banking crisis, PoliticoPro (May 31, 2023).

[5] Rep. Glenn ''GT'' Thompson (PA–15), Opening Statement for the Hearing ''Rising Risks: Managing Volatility in Global Commodity Derivatives Markets,'' (Mar. 9, 2023), available at *https://agriculture.house.gov/news/documentsingle.aspx?DocumentID=7564.* Among the ways in which DCOs performed well during a period of intense volatility, an interim CFTC staff report highlighted that both the size and frequency of portfolio-level breaches were well within risk management tolerances at our DCOs, and major DCOs had sufficient pre-funded collateral in the form of initial margin to cover any potential clearing member defaults within and across and CCPs. *See* CFTC Interim Staff Report, Cleared Derivatives Markets: March–April 2020, (2021), *InterimStaffClearedDerivativesMarket0420_0621.pdf.*

and procedures governing the RMC consultation process and the role of RMC members. In addition to the RMC, the rule requires DCOs to establish one or more market participant risk advisory working groups (RWGs) that must convene at least twice a year, and adopt written policies and procedures related to the formation and role of the RWG.

I appreciate that the staff took many commenters' suggestions to make the rule more flexible for DCOs while still adhering to the Part 39 Core Principles. For example, the final rule does not categorically treat a DCO's proposal to clear a new product as a matter that could materially affect the DCO's risk profile, but instead provides flexibility to determine materiality on a case-by-case basis and to then require RMC consultation pursuant to § 39.24(b)(11). Staff recognized that this could result in unnecessary administrative costs and delays in launching new products, and, importantly, that DCOs are uniquely situated to determine what constitutes a new product.

Providing Regulatory Clarity To Promote Compliance

I appreciate that the staff made revisions to certain rule provisions in response to my concerns regarding regulatory clarity. If a rule is confusing, it can actually inhibit compliance simply because it is unclear what the Commission's expectations are for our registered entities or registrants. Mind-reading is not a good approach for rule implementation.

For example, the preamble to the final rule now provides further clarification that DCOs have flexibility on how they structure the RMC, and the difference between a DCO structuring an RMC as an advisory committee to satisfy § 39.24(b)(11), and the risk management committee of a board of directors, especially for public companies and their subsidiaries and affiliates.

Proposed § 39.24(b)(11) required a DCO to maintain governance arrangements that establish one or more RMCs, and a DCO's board of directors to consult with, and consider and respond to input from, its RMC(s) on all matters that could materially affect the risk profile of the DCO, including any material change to the DCO's margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products.

My concern—reflected in various comment letters—was that the proposal was unclear whether an RMC was required to be structured as a board-level committee, or if the RMC could be structured as an advisory committee, *and* the DCO could still have a separate risk management committee of the board of directors for corporate governance purposes. I appreciate that the preamble to the final rule now clarifies that if a DCO structures its RMC as an advisory committee to satisfy the requirements of § 39.24(b)(11), it may also have a separate board-level risk management committee that is comprised of members of the board of directors that is not subject to § 39.24(b)(11).

If the DCO's RMC for purposes of § 39.24(b)(11) was a board-level committee, our RMC requirements would potentially conflict with existing standards for corporate governance. I was concerned the proposal inaccurately suggested a requirement that the RMC must be structured as a board-level committee, and consequently, that DCOs had to appoint clearing members and customers to their boards of directors to meet the requirements of § 39.24(b)(11), among other changes to board procedures and processes. How a firm establishes board committees and delegates responsibilities is an important corporate governance decision and process, and subject to existing corporations law and other regulations.[6] Comment letters reflected these concerns and confusion, especially since the SEC has proposed similar (but not identical) risk management committee requirements for clearing agencies, and *does* require that clearing agencies establish a board-level risk management committee.

In addition, at my request, the staff has removed the word ''independent'' from the final rule text with respect to members of an RMC for purposes of § 39.24(b)(11), because this issue was already addressed by the rule's requirements for conflicts of interest policies and risk-based input, and it is different from the concept of ''independence'' for outside board directors. This issue becomes particularly acute if the RMC is structured as a board-level committee, or if a board director is serving on an RMC that is structured as an advisory committee. I do not believe that the Commission should interpret or opine on corporate governance law or Delaware corporations law requirements regarding the duties of the board of directors, including fiduciary duties. I believe that the proposal's concept of ''independence'' was more akin to input by RMC members that is informed by expertise with avoidance of conflicts of interest, and the final rule appropriately reflects this.

Conclusion

In closing, I'd like to thank my fellow Commissioners and the staff for addressing my concerns, and especially thank the staff for their hard work on this rule designed to provide a forum for stakeholders to be engaged in the sound risk management of our clearing system for derivatives markets. The diverse viewpoints provided by stakeholders, including clearing members and their customers, should help to increase the dialogue between DCOs and clearing members and result in enhanced resilience for CCPs.

[FR Doc. 2023–14361 Filed 7–12–23; 8:45 am]

BILLING CODE 6351–01–P

[6] *See, e.g.,* Matteo Tonello, ''Should Your Board Have a Separate Risk Committee?'' Harvard Law School Forum on Corporate Governance (Feb. 12, 2012) (based on a Conference Board Director Note by Carol Beaumier and Jim DeLoach, which was adapted from Board Perspectives: Risk Oversight, Protiviti, Issue 24, October 2011), available at *https://corpgov.law.harvard.edu/2012/02/12/should-your-board-have-a-separate-risk-committee/*.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0462]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters, located in Baltimore County, MD, during a high-speed power boat event, which will either take place as scheduled (on July 15, 2023) or on an alternate date (July 16, 2023), in case of inclement weather. This rule prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

DATES: This rule is effective from 8 a.m. on July 15, 2023, to 5 p.m. on July 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MST2 Hollie Givens, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2596, email *MDNCRMarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Tiki Lee's Dock Bar of Sparrows Point, MD, notified the Coast Guard that they will be conducting the 2023 Tiki Lee's Shootout on the River from 9 a.m. to 5 p.m. on July 15, 2023. The individually-timed power boat speed runs event consists of approximately 40 participants competing on a designated, marked linear course located on Back River between Porter Point to the south and Stansbury Point to the north. The event is being staged out of Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. In the event of inclement weather on July 15,

2023, the event will be conducted from 9 a.m. to 5 p.m. on July 16, 2023. Potential hazards from the high-speed power boat event include collisions between participants operating within and adjacent to the designated navigation channel and with vessels operating within that channel or within approaches to local marinas and boat facilities and waterfront residential communities. The COTP Maryland-National Capital Region has determined that these potential hazards would be a safety concern for anyone participating in this event and for other vessels operating within specified waters of Back River. In response, on June 15, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Back River, Baltimore County, MD (88 FR 39206). There, we stated why we issued the NPRM and we invited comments on our proposed regulatory action related to this event. During the comment period, which ended June 30, 2023, we received no comments.

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**. As there are fewer than 30 days remaining before the date of the event, it would be impracticable and contrary to the public interest to make the regulation effective 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would delay the implementation of safety measures necessary to respond to the potential safety hazards associated with this marine event. These potential hazards include collisions between participants operating within and adjacent to the designated navigation channel and with vessels not affiliated with the event operating within that channel and within approaches to local marinas, boat facilities, and waterfront residential communities. Immediate action is needed to protect participants, spectators, and other persons and vessels during the high-speed power boat event on these navigable waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the high-speed power boat event to be held on July 15, 2023 (or on a rain date of July 16, 2023) will be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD, in or near the event area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 1, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM other than the addition of language specifying the effective date of the rule and the deletion of an extraneous definition of ''aerobatics box.''

This rule establishes special local regulations effective from 8 a.m. on July 15 to 6 p.m. on July 16, 2023 and subject to enforcement from 8 a.m. to 6 p.m. on each of those days. The regulated area will cover all navigable waters of Back River within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This rule provides additional information about areas within the regulated area and their definitions. These areas include ''Course Area,'' ''Buffer Area,'' and ''Spectator Areas.''

The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 9 a.m. to 5 p.m. on July 15, 2023, (with an alternate date of July 16, 2023 in case of inclement weather). The COTP and the Coast Guard Event PATCOM will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for participants in the 2023 Tiki Lee's Shootout on the River and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic will be able to transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel neither registered with the event sponsor as a participant nor assigned as an official patrol will be considered a spectator. An official Patrol is any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area, and in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels will direct spectators to the designated spectator area. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

The regulatory text appears at the end of this document.

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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which will impact a small, designated area of Back River for

a total of 10 hours during which the area will be subject to enforcement. This waterway mainly supports recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule allows vessels and persons to seek permission to enter the regulated area, and vessel traffic will be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

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 received no comments from the Small Business Administration on this rulemaking. 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 the Coast Guard's 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 implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shoreside activities in the event area lasting for 10 total enforcement hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 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 § 100.501T05–0462 to read as follows:

§ 100.501T05–0462 2nd Annual Tiki Lee's Shootout on the River, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Course Area.* The course area is a polygon in shape measuring

approximately 1,400 yards in length by 50 yards in width. The area is bounded by a line commencing at position latitude 39°16′14.98″ N, longitude 076°26′57.38″ W, thence east to latitude 39°16′15.36″ N, longitude 076°26′55.56″ W, thence south to latitude 39°15′33.40″ N, longitude 076°26′49.70″ W, thence west to latitude 39°15′33.17″ N, longitude 076°26′51.60″ W, thence north to and terminating at the point of origin.

(3) *Buffer Area.* The buffer area is a polygon in shape measuring approximately 100 yards in east and west directions and approximately 150 yards in north and south directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16′18.72″ N, longitude 076°27′01.74″ W, thence east to latitude 39°16′20.36″ N, longitude 076°26′52.39″ W, thence south to latitude 39°15′29.27″ N, longitude 076°26′45.36″ W, thence west to latitude 39°15′28.43″ N, longitude 076°26′54.94″ W, thence north to and terminating at the point of origin.

(4) *Spectator Areas*—(i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15′20.16″ N, longitude 076°26′17.99″ W, thence west to latitude 39°15′17.47″ N, longitude 076°26′27.41″ W, thence north to latitude 39°16′18.48″ N, longitude 076°26′48.42″ W, thence east to latitude 39°16′25.60″ N, longitude 076°26′27.14″ W, thence south to latitude 39°15′40.90″ N, longitude 076°26′31.30″ W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16′01.64″ N, longitude 076°27′11.62″ W, thence south to latitude 39°15′47.80″ N, longitude 076°27′06.50″ W, thence southwest to latitude 39°15′40.11″ N, longitude 076°27′08.71″ W, thence northeast to latitude 39°15′45.63″ N, longitude 076°27′03.08″ W, thence northeast to latitude 39°16′01.19″ N, longitude 076°27′05.65″ W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15′30.81″ N, longitude 076°27′05.58″ W, thence south to latitude 39°15′21.06″ N, longitude 076°26′56.14″ W, thence east to latitude 39°15′21.50″ N, longitude 076°26′52.59″ W, thence north to latitude 39°15′29.75″ N, longitude 076°26′56.12″ W, thence west to and terminating at the point of origin.

(b) *Definitions.* As used in this section:

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the ''2nd Annual Tiki Lee's Shootout on the River'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Effective period.* This section will be effective from 8 a.m. on July 15, 2023 to 5 p.m. on July 16, 2023.

(f) *Enforcement periods.* This section will be subject to enforcement from 8 a.m. to 6 p.m. on July 15, 2023, and from July 15, 2023, from 8 a.m. to 6 p.m. on July 16, 2023.

Dated: July 6, 2023.

David E. O'Connell,

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

[FR Doc. 2023–14811 Filed 7–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2023–0464]

RIN 1625–AA08; AA00

Special Local Regulation and Safety Zone; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations for certain waters of the Back River. This action is necessary to provide for the safety of life on these navigable waters near Baltimore County, MD, during a fireworks display on July 15, 2023, (alternate date on July 16, 2023). This regulation prohibits persons and vessels from being in the regulated area and safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 8 to 10:30 p.m. on July 15, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0464 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 CDR Samuel M. Danus, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2519, email *MDNCRMarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On June 7, 2023, Fantastic Fireworks, on behalf of Tiki Lee's Dock Bar, notified the Coast Guard that it will be conducting a fireworks display between 9 and 10 p.m. on July 15, 2023, as a part of the ''Shootout on the River'' event activities. The fireworks are to be launched from a barge in the Back River located near Tiki Lee's Dock Bar in Sparrows Point, MD. In the event of inclement weather on July 15, 2023, the fireworks display will be conducted between 9 and 10 p.m. on July 16, 2023. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port, Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 600 foot radius of the barge. The Coast Guard anticipates a large spectator fleet for these events.

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 immediate action is needed to respond to the potential safety hazards associated with fireworks debris and the anticipated large spectator fleet.

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**. Due to the date of the event, it would be impracticable to make the regulation effective 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this fireworks event. Hazards include explosive materials, dangerous projectiles, and falling debris. The fireworks fall out zone extends across the navigable channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 and 46 U.S.C. 70041. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in the July 15, 2023, display will be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD, in or near the event area.

IV. Discussion of the Rule

This rule establishes a special local regulation for the area in the Back River in which spectating vessels will transit and gather. The regulated area covers all navigable waters of Back River within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

In addition to establishing a special local regulation, the COTP is establishing a temporary safety zone around the fireworks discharge site, in approximate position latitude 39°15′35.54″ N, longitude 76°26′56.62″ W. The safety zone covers all navigable waters within 600 feet of a fireworks barge in the Back River located near Tiki Lee's Dock Bar in Sparrow's Point, MD. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would 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, duration, and time-of-day of the special local regulation and safety zone, which would impact a small designated area of the Back River

for a total of no more than 2.5 enforcement-hours, during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zones.

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 regulated area or safety zone may be small entities, for the reasons stated in section V.A above, this rule would 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 implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area, and within 33 CFR part 165 establishing a temporary safety zone that would prohibit entry within 600 feet of a fireworks barge, both lasting a total of 2.5 consecutive hours. It is categorically excluded from further review under paragraph L61 and 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 Parts 100 and 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 parts 100 and 165 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 § 100.501T05–0464 to read as follows:

§ 100.501T05–0464 2023 Tiki Lee's Shootout on the River Fireworks, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin.

(2) [Reserved]

(b) *Definitions.* As used in this section:

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or

any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the ''2023 Tiki Lee's Shootout on the River Fireworks'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 p.m. to 10:30 p.m. on July 15, 2023.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. 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.

■ 4. Add § 165.T05–0464 to read as follows:

§ 165.T05–0464 Safety Zone; Back River, Baltimore County, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Back River within 600 feet of the fireworks barge in approximate position latitude 39°15′35.54″ N, longitude 76°26′56.62″ W. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section:

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(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 telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(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 officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 to 10:30 p.m. on July 15, 2023, and, if necessary due to inclement weather on July 15, 2023, from 8 to 10:30 p.m. on July 16, 2023.

Dated: July 5, 2023.

David E. O'Connell,

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

[FR Doc. 2023–14816 Filed 7–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0503]

RIN 1625–AA00

Safety Zone; Anchor Bay Bass, Brew, and BBQ Fireworks, Lake St. Clair; Chesterfield, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

DATES: This rule is effective from 9:30 p.m. on July 28, 2023, through 10:30 p.m. on July 29, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–

0503 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Tracy Girard, Waterways Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment on Lake St. Clair. It is impracticable and contrary to the public interest to publish a NPRM because we must establish this safety zone by July 28, 2023.

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

III. Legal Authority and Need for Rule

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

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 through 10:30 p.m. on July 28, 2023. In the case of inclement weather on July 28, 2023, this safety zone will be enforced from 10 through 10:30 p.m. on July 29, 2023. The safety zone will encompass all U.S. navigable waters of Lake St. Clair within a 200-yard radius of the fireworks launch site located 42°39′55.69″ N, 082°45′23.58″ W, near Brandenburg Park, in Chesterfield, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

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

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0503 to read as follows:

§ 165.T09–0503 Safety Zone; Anchor Bay Bass, Brew, and BBQ Fireworks, Lake St. Clair; Chesterfield, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of Lake St. Clair within a within a 200-yard radius of the fireworks launch site located at position 42°39′55.69″ N, 082°45′23.58″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement Period.* This regulation will be enforced from 9:30 through 10:30 p.m. on July 28, 2023. In the case of inclement weather on July 28, 2023, this safety zone will be enforced from 10 through 10:30 p.m. on July 29, 2023. The Captain of the Port Detroit or a designated representative may suspend enforcement of the safety zone at any time.

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

(d) *Regulations.*

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

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

Dated: July 7, 2023.

Richard P. Armstrong,

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

[FR Doc. 2023–14847 Filed 7–12–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0027; FRL–10988–01–R4]

Air Plan Approval; South Carolina; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the South Carolina State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by South Carolina and approved by EPA. In this rule, EPA is also notifying the public of corrections and clarifying changes to the Code of Federal Regulations (CFR) tables that identify material incorporated by reference into the South Carolina SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This rule is effective July 13, 2023.

ADDRESSES: The SIP materials whose incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303 and *www.regulations.gov.* To view the materials at the Region 4 Office, EPA requests that you email the contact

listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. LaRocca can be reached via telephone at (404) 562–8994 and via electronic mail at *larocca.sarah@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Each State has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each State must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52—''Approval and Promulgation of Implementation Plans,'' Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the State regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52 but is ''incorporated by reference.'' This means that EPA has approved a given State regulation or specified changes to a given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in any given SIP. The information provided allows EPA and the public to monitor the extent to which a State implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on proposed revisions containing new or revised State regulations. A submission from a State can revise one or more rules in their entirety or portions of rules. The State indicates the changes in the submission (such as by using redline/strikethrough text), and EPA then takes action on the requested changes. EPA establishes a docket for its actions using a unique Docket Identification Number, which is listed in each action. These dockets and the complete submission are available for viewing on *www.regulations.gov.*

On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials approved by EPA into each SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain ''SIP Compilations'' that contain the federally approved regulations and source-specific permits submitted by each State agency.

EPA generally updates these SIP Compilations on an annual basis. Under the revised procedures, EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular State. EPA applied the 1997 revised procedures to South Carolina on July 1, 1997 (62 FR 35441) and is providing this notice in accordance with such procedures.

II. EPA Action

In this action, EPA is providing notice of an update to the materials incorporated by reference into the South Carolina SIP as of November 14, 2022 and identified in 40 CFR 52.2120(c) and (d). This update includes SIP materials approved by EPA since the last IBR update. *See* 83 FR 14591 (April 5, 2018). In addition, EPA is providing notice of the following corrections and clarifying changes to 40 CFR 52.2120(c) and (d).

Changes Applicable to EPA-Approved South Carolina Laws and Regulations

A. Correcting the header of paragraph (c), from ''*(c) EPA-Approved regulations.*'' to ''*(c) EPA-Approved Laws and Regulations.*''

B. Changing Table (c)'s title from ''EPA-Approved South Carolina Regulations'' to ''EPA-Approved South Carolina Laws and Regulations''

C. Correcting **Federal Register** citations to reflect the beginning page of the preamble as opposed to that of the regulatory text.

Changes Applicable to EPA-Approved South Carolina Source-Specific Requirements

A. Correcting the header of paragraph (d), from ''*(d) EPA-Approved State source-specific requirements.*'' to ''*(d) EPA-Approved State Source-Specific Requirements.*''

III. Good Cause Exemption

EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs, makes typographical/ministerial revisions to the tables in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553(b)(3)(B) of the APA, an agency may find good cause where procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and corrections) only reflect existing law, and the changes to the prefatory heading to the tables are ministerial in nature. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated South Carolina SIP Compilation and notice of typographical corrections and ministerial changes to the South Carolina ''Identification of Plan'' portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP Compilation and the CFR ''Identification of plan'' section (which includes table entry corrections).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of regulations promulgated by South Carolina, previously approved by EPA and federally effective before November 14, 2022, contained in ''South Carolina, Volume 1, 40 CFR 52.2120(c), State Implementation Plan Compilation, EPA-Approved Laws and

Regulations'' and ''South Carolina, Volume 2, 40 CFR 52.2120(d), State Implementation Plan Compilation, EPA-Approved Source-Specific Requirements''. The IBR changes are further described in sections I and II of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this final rule and notification of administrative change does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of ection 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

Because this action merely updates and corrects regulatory text in the CFR tables for regulations previously submitted by South Carolina and approved by EPA, this action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by State law or local governing bodies, in accordance with the Settlement Act.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the South Carolina SIP Compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA believes judicial review of this action under section 307(b)(1) is not available.

List of Subjects in 40 CFR Part 52

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

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

40 CFR part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart PP—South Carolina

■ 2. In § 52.2120, paragraphs (b), (c), and (d) are revised as follows:

§ 52.2120 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to November 14, 2022, was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notice of any change in the material

will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after November 14, 2022, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street SW, Atlanta, GA 30303. To obtain the material, please call (404) 562–9022. You may inspect the material with an EPA approval date prior to November 14, 2022, for South Carolina at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA email *fedreg.legal@nara.gov* or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA-Approved Laws and Regulations.*

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED SOUTH CAROLINA LAWS AND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Regulation No. 62.1	Definitions and General Requirements.			
Section I	Definitions	4/24/2020	10/28/2021, 86 FR 59641.	
Section II	Permit Requirements	6/24/2005	6/2/2008, 73 FR 31369	Except for Section II.L, approved on October 13, 2022 with a state effective date of September 23, 2016.
Section III	Emissions Inventory and Emissions Statement.	4/24/2020	5/9/2022, 87 FR 27528.	
Section IV	Source Tests	6/27/2014	8/21/2017, 82 FR 39537.	
Section V	Credible Evidence	4/24/2020	5/9/2022, 87 FR 27528.	
Regulation No. 62.2	Prohibition of Open Burning.	12/27/2013	6/25/2018, 83 FR 29455.	
Regulation No. 62.3	Air Pollution Episodes.			
Section I	Episode Criteria	4/26/2013	8/21/2017, 82 FR 39541.	
Section II	Emission Reduction Requirements.	4/22/1988	10/3/1989, 54 FR 40659.	
Regulation No. 62.4	Hazardous Air Pollution Conditions.	12/20/1978	1/29/1980, 45 FR 6572.	
Regulation No. 62.5	Air Pollution Control Standards.			
Standard No. 1	Emissions from Fuel Burning Operations.			
Section I	Visible Emissions	9/23/2016	10/13/2022, 87 FR 62037.	
Section II	Particulate Matter Emissions.	6/27/2014	6/25/2018, 83 FR 29455.	
Section III	Sulfur Dioxide Emissions.	6/27/2014	6/25/2018, 83 FR 29455.	
Section IV	Opacity Monitoring Requirements.	9/23/2016	9/18/2020, 85 FR 58283.	
Section V	Exemptions	5/24/1985	10/3/1989, 54 FR 40659.	
Section VI	Periodic Testing	6/27/2014	6/25/2018, 83 FR 29455.	
Standard No. 2	Ambient Air Quality Standards.	4/24/2020	9/30/2021, 86 FR 54105.	
Standard No. 4	Emissions From Process Industries.			
Section I	General	2/28/1986	2/17/1987, 52 FR 4772.	
Section II	Sulfuric Acid Manufacturing.	6/27/2014	6/25/2018, 83 FR 29455.	
Section III	Kraft Pulp and Paper Manufacturing Plants.	6/27/2014	6/25/2018, 83 FR 29455.	
Section V	Cotton Gins	6/27/2014	6/25/2018, 83 FR 29455.	
Section VI	Hot Mix Asphalt Manufacturing.	5/24/1985	10/3/1989, 54 FR 40659.	
Section VII	Metal Refining	2/28/1986	2/17/1987, 52 FR 4772.	
Section VIII	Other Manufacturing	6/24/2016	6/25/2018, 83 FR 29455.	
Section IX	Total Reduced Sulfur Emissions of Kraft Pulp Mills.	9/23/2016	10/13/2022, 87 FR 62034.	
Section X	Non-Enclosed Operations.	4/22/1988	7/2/1990, 55 FR 27226.	
Section XI	Total Reduced Sulfur Emissions of Kraft Pulp Mills.	9/23/2016	10/13/2022, 87 FR 62037.	
Section XII	Periodic Testing	6/24/2016	6/25/2018, 83 FR 29455.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED SOUTH CAROLINA LAWS AND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Standard No. 5	Volatile Organic Compounds.			
Section I	General Provisions.			
Part A	Definitions	4/26/2013	8/16/2017, 82 FR 38825.	
Part B	General Applicability	10/26/2001	5/7/2002, 67 FR 30594.	
Part C	Alternatives and Exceptions to Control Requirements.	10/26/2001	5/7/2002, 67 FR 30594.	
Part D	Compliance Schedules	10/26/2001	5/7/2002, 67 FR 30594.	
Part E	Volatile Organic Compound Compliance Testing.	6/26/1998	8/10/2004, 69 FR 48395.	
Part F	Recordkeeping, Reporting, Monitoring.	10/26/2001	5/7/2002, 67 FR 30594.	
Part G	Equivalency Calculations.	4/26/2013	8/16/2017, 82 FR 38825.	
Section II	Provisions for Specific Sources.			
Part A	Surface Coating of Cans	11/27/2015	8/16/2017, 82 FR 38825.	
Part B	Surface Coating of Coils	11/27/2015	8/16/2017, 82 FR 38825.	
Part C	Surface Coating of Paper, Vinyl, and Fabric.	8/24/1990	2/4/1992, 57 FR 4158.	
Part D	Surface Coating of Metal Furniture and Large Appliances.	8/24/1990	2/4/1992, 57 FR 4158.	
Part E	Surface Coating of Magnet Wire.	10/26/2001	5/7/2002, 67 FR 30594.	
Part F	Surface Coating of Miscellaneous Metal Parts and Products.	10/26/2001	5/7/2002, 67 FR 30594.	
Part G	Surface Coating of Flat Wood Paneling.	2/25/1983	10/31/1983, 48 FR 50078.	
Part H	Graphic Arts—Rotogravure Flexography.	2/25/1983	10/31/1983, 48 FR 50078.	
Part N	Solvent Metal Cleaning	10/26/2001	5/7/2002, 67 FR 30594.	
Part O	Petroleum Liquid Storage in Fixed Roof Tanks.	2/25/1983	10/31/1983, 48 FR 50078.	
Part P	Petroleum Liquid Storage in External Floating Roof Tanks.	2/25/1983	10/31/1983, 48 FR 50078.	
Part Q	Manufacture of Synthesized Pharmaceutical Products.	4/26/2013	8/16/2017, 82 FR 38825.	
Part R	Manufacture of Pneumatic Rubber Tires.	2/25/1983	10/31/1983, 48 FR 50078.	
Part S	Cutback Asphalt	6/13/1979	12/16/1981, 46 FR 61268.	
Part T	Bulk Gasoline Terminals and Vapor Collection Systems.	2/25/1983	10/31/1983, 48 FR 50078.	
Standard No. 5.2	Control of Oxides of Nitrogen (NO_X).	6/25/2004	8/26/2005, 70 FR 50195.	
Standard No. 7	Prevention of Significant Deterioration.	4/24/2020	10/28/2021, 86 FR 59646.	
Standard No. 7.1	Nonattainment New Source Review.	4/24/2020	10/28/2021, 86 FR 59646.	Except for paragraph (H) and the ethanol production facilities exclusion in paragraphs (A)(10)(t) and (B)(22)(c)(xx).
Regulation No. 62.6	Control of Fugitive Particulate Matter.			
Section I	Control of Fugitive Particulate Matter in Non-Attainment Areas.	11/27/2015	8/21/2017, 82 FR 39541.	
Section II	Control of Fugitive Particulate Matter in Problem Areas.	5/24/1985	10/3/1989, 54 FR 40659.	
Section III	Control of Fugitive Particulate Matter Statewide.	12/27/2013	8/21/2017, 82 FR 39541.	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED SOUTH CAROLINA LAWS AND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section IV	Effective Date	5/24/1985	10/3/1989, 54 FR 40659.	
Regulation No. 62.7	Good Engineering Practice Stack Height.			
Section I	General	5/23/1986	5/28/1987, 52 FR 19858.	
Section II	Applicability	5/23/1986	5/28/1987, 52 FR 19858.	
Section III	Definitions and Conditions.	5/23/1986	5/28/1987, 52 FR 19858.	
Section IV	Public Participation	5/23/1986	5/28/1987, 52 FR 19858.	
Regulation No. 62.96	Nitrogen Oxides (NO_X) Budget Program.	1/25/2019	7/29/2020, 85 FR 45541.	
Regulation No. 62.97	Cross-State Air Pollution Rule (CSAPR) Trading Program.	8/25/2017	10/13/2017, 82 FR 47936.	
Regulation No. 62.99	Nitrogen Oxides (NO_X) Budget Program Requirements for Stationary Sources Not in the Trading Program.	5/24/2002	6/28/2002, 67 FR 43546.	
S.C. Code Ann	Ethics Reform Act.			
Section 8–13–100(31)	Definitions	1/1/1992	8/1/2012, 77 FR 45492.	
Section 8–13–700(A) and (B).	Use of official position or office for financial gain; disclosure of potential conflict of interest.	1/1/1992	8/1/2012, 77 FR 45492.	
Section 8–13–730	Membership on or employment by regulatory agency of person associated with regulated business.	1/1/1992	8/1/2012, 77 FR 45492.	

(d) *EPA-Approved State Source-Specific Requirements.*

TABLE 2 TO PARAGRAPH (D)—EPA-APPROVED SOUTH CAROLINA STATE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Transcontinental Gas Pipeline Corporation Station 140.	2060–0179–CD	4/27/2004	4/23/2009, 74 FR 18471	This permit is incorporated in fulfillment of the NOx SIP Call Phase II requirements for South Carolina.

* * * * *

[FR Doc. 2023–14534 Filed 7–12–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0972; FRL–10529–02–R9]

Second 10-Year Maintenance Plan for the Coso Junction PM–10 Planning Area; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the ''Coso Junction PM_{10} Planning Area Second 10-Year Maintenance Plan'' (''Coso Junction Second Maintenance Plan'' or ''Plan'') as a revision to the state implementation plan (SIP) for the State of California. The Coso Junction Second Maintenance Plan includes, among other elements, a base year emissions inventory, a maintenance demonstration, and contingency provisions. The EPA is finalizing this action because the SIP revision meets the applicable statutory and regulatory requirements for such plans. The EPA is also taking final action to find the contribution of motor vehicle emissions to the area's continued attainment of the 1987 PM_{10} standards to be insignificant. Once this insignificance finding is finalized, the area will not have to complete a regional emissions analysis for any transportation conformity determinations necessary for the Coso Junction Planning Area (CJPA).

DATES: This rule is effective August 14, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA- EPA–R09–OAR–2022–0972. 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: Lindsay Wickersham, Planning Section (AIR–2–1), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4192, or by email at *wickersham.lindsay@epa.gov.*

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

Table of Contents

I. Summary of Proposed Rule
II. Public Comments and EPA Responses
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I. Summary of Proposed Rule

On March 30, 2023, the EPA proposed to approve the Coso Junction Second Maintenance Plan prepared by the Great Basin Unified Air Pollution Control District (GBUAPCD) and submitted by the California Air Resources Board (CARB) on October 21, 2021, as a revision to the California SIP.[1] In doing so, we proposed to find that the Coso Junction Second Maintenance Plan adequately demonstrates that the CJPA will maintain the 1987 annual national ambient air quality standards (NAAQS or ''standards'') for particulate matter of ten microns or less (PM_{10}) through the year 2030 (*i.e.,* for more than 10 years beyond the first 10-year maintenance period), with the maintenance period ending on October 4, 2030. We also proposed to find that the Plan includes sufficient contingency provisions to promptly correct any violation of the PM_{10} standards that may occur. Lastly, we proposed to find that motor vehicle related PM_{10} emissions do not contribute significantly to the PM_{10} air quality problem in the CJPA based on consideration of the factors identified in § 93.109(f) of the EPA's transportation conformity regulations.[2]

The EPA announced the availability of the Plan and motor vehicle emissions insignificance finding on the EPA's transportation conformity website on April 3, 2023, and requested comments by May 3, 2023. We received no comments in response to the adequacy review posting.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on May 1, 2023. We received no comments on our proposal during the comment period.

III. Air Quality Conditions Since Proposal

As part of our proposal, we evaluated complete, quality-assured, and certified, data available at the time (*i.e.,* through 2021).[3] These data indicated that there had been four exceedances of the PM_{10} NAAQS in the CJPA between 2018 and 2020. The District and CARB provided information to the EPA about the September 7, 2020 exceedance that explained that the exceedance was not within the State's control.[4] As conveyed in the EPA's concurrence letter, we concurred that, based on the weight of evidence, the September 7, 2020 exceedance was caused by an exceptional event due to the Creek Fire in the Sierra National Forest and the SQF Complex wildfire in the Sequoia National Forest.[5] Based on a review of air quality data during the three-year period covered by the Plan (2018–2020) and excluding the exceedance flagged by CARB and GBUAPCD and concurred with by the EPA as an exceptional event, we find that the 2020 design value for the Coso Junction PM_{10} nonattainment area is 1.0 and that the area maintained the PM_{10} standards in that year.

In 2021, there were three additional exceedances of the PM_{10} NAAQS in the area. These additional exceedances in 2021 caused the number of exceedances recorded at the air monitor averaged over three consecutive years (*i.e.,* 2019–2021) to be greater than 1.05. However, we do not think these data contradict the EPA's finding that the State's plan provides for maintenance of the PM_{10} NAAQS under section 175A(b) of the Clean Air Act (CAA). The District and CARB provided information to the EPA about the six exceedances that occurred in 2019–2021 that explained that three of the exceedances were not within the State's nor District's control.[6] The information provided indicates that the September 7, 2020, September 19, 2021, and September 27, 2021 exceedances were all caused by wildfire smoke. The EPA has reviewed the information provided by the State regarding the 2019–2021 exceedances, and we agree that this information does not call into question the EPA's proposed approval of the Coso Junction Second Maintenance Plan as providing for maintenance of the PM_{10} NAAQS. We note as well that the State's analysis and the EPA's evaluation are consistent with the proposed changes to the maintenance plan that the EPA is approving in this final action to evaluate data that may have been influenced by certain events in determining whether contingency provisions should be triggered.

As part of this final action, we evaluated complete, quality-assured, and certified data available for 2022.[7] These data indicated that there had been one exceedance of the PM_{10} NAAQS in the CJPA in 2022.[8] Given the EPA's agreement that the 2021 exceedances do not call into question the EPA's proposal to approve the Coso Junction Second Maintenance Plan as providing for maintenance of the NAAQS, the State is not required at this time to submit additional information and analyses for the 2022 exceedance, because such exceedance, without the 2021 exceedances, would not on its own cause a violation of the NAAQS. Upon the effective date of this final action, if additional exceedances occur in 2023 or a later year such that the number of exceedances averaged over three

[1] 88 FR 19034.

[2] 40 CFR part 93.

[3] 88 FR 19034, 19036.

[4] Email dated August 24, 2021, from Candace Clawson, CARB, to Michael Benjamin, CARB, Subject: ''CARB letter to EPA GBUAPCD PM_{10}NEE_signed, EPA Cvr Ltr—2021 2nd Maint. Plan-EE Submittal-2021073_signed and GBUAPCD Exceptional Event Demonstration September 7 2020 FINAL,'' with three attachments. While submitted by CARB, the demonstrations and addendums were developed through a joint effort by CARB and the GBUAPCD.

[5] Email dated July 12, 2022, from Anna Mebust, EPA Region IX, to Sylvia Vanderspek, CARB, Subject: ''EPA Concurrence on 2020 PM10 Wildfire Exceptional Event,'' with attachments, ''DD_Concurrence_Letter.pdf;'' ''CosoJunctionWildfirePM_{10}_ConcurrenceTSD.pdf.''

[6] Submitted via email on September 1, 2022, from Sylvia Vanderspek, CARB to Gwen Yoshimura, EPA Region IX, Subject: ''FW: Coso Junction Initial Notification Forms for 2nd PM_{10} MP Contingency,'' with attachments, ''INI 2010–2020 Coso Junction PM_{10}.pdf,'' ''Discussion of PM_{10} Exceedances at Coso Junction 2010 through 2021.pdf,'' ''INI 2021 Coso Junction PM_{10}.pdf,'' and ''Coso Junction 2021 Wildfire Smoke Exceedances.pdf.''

[7] Email dated May 1, 2023, from Fletcher Clover, EPA Region IX, to Chris Howard, GBUAPCD, Subject: ''RE: Great Basin Unified APCD Ambient Air Monitoring Data Certification for 2022,'' with attachments, ''Great Basin 2022 AQS data certification—AMP450NC_2102387 with EPA concurrence flags.pdf'' and ''Great Basin 2022 AQS data certification—AMP600_2102385 with EPA concurrence flags.pdf.''

[8] EPA Air Quality System Design Value Report, AMP480, accessed May 9, 2023 (User ID: STSAI, Report Request ID: 2104344).

consecutive years is greater than 1.05, per Section 7 of the Plan, the State will be required to submit information regarding those exceedances if it wishes to request that the exceedances be excluded from the contingency trigger calculation. The EPA will review such information and will notify the State whether the contingency provisions have been triggered per the schedule outlined in the Plan.

IV. Environmental Justice Considerations

As described in detail in our proposal, the EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the southwest portions of Inyo County.[9] The EPA then compared the data to the corresponding data for the United States as a whole for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes.

This final action approves the Coso Junction Second Maintenance Plan, which provides for the continued maintenance of the PM_{10} NAAQS. We expect that this action will generally be neutral or contribute to reduced environmental and health impacts on all populations in the CJPA, including people of color and low-income populations. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Final Action

For the reasons discussed in our proposed action and herein, the EPA is taking final action to approve the Coso Junction Second Maintenance Plan, submitted by CARB on October 20, 2021, as a revision to the California SIP. We are approving the maintenance demonstration and contingency provisions as meeting all of the applicable requirements for maintenance plans and related contingency provisions in CAA section 175A, and we are finalizing an insignificance finding for motor vehicle emissions in the CJPA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, there are no areas of Indian country within the CJPA, and the State plan is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA's evaluation of environmental justice is described in the section of this document titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the 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. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and 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). Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting

[9] 88 FR 19034, 19044.

and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: July 3, 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 paragraph (c)(603) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(604) The following plan was submitted electronically on October 21, 2021, by the Governor's designee as an attachment to a letter dated October 20, 2021.

(i) [Reserved]

(ii) *Additional materials.* (A) Great Basin Unified Air Pollution Control District.

(*1*) Coso Junction PM_{10} Planning Area Second 10-Year Maintenance Plan, adopted on September 23, 2021.

(*2*) [Reserved]

(B) [Reserved]

[FR Doc. 2023–14688 Filed 7–12–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 83

[EPA–HQ–OAR–2020–0044; FRL–6530.8–02–OAR]

RIN 2060–AV18

Rescinding the Rule on Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the rescission of the rule entitled, ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process'' (hereinafter, the ''Benefit-Cost Rule''). The EPA is rescinding the rule because the changes advanced by the rule were inadvisable, untethered to the Clean Air Act (CAA), and not necessary to effectuate the purposes of the Act.

DATES: This final rule is effective on August 14, 2023.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2020–0044. 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 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 electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Leif Hockstad, Office of Air Policy and Program Support, Office of Air and Radiation, U.S. EPA, Mail Code 6103A, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343–9432; email address: *hockstad.leif@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations

The EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

APA Administrative Procedure Act
BCA Benefit-Cost Analysis
CAA Clean Air Act
CBI Confidential Business Information
CDC Centers for Disease Control and Prevention
CFR Code of Federal Regulations
CRA Congressional Review Act
E.O. Executive Order
EPA Environmental Protection Agency
FR Federal Register
HAP Hazardous Air Pollutants
MACT Maximum Achievable Control Technology
NAAQS National Ambient Air Quality Standards
NRDC National Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
SAB Science Advisory Board
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code

Organization of this document. The information in this preamble is organized as follows:

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A. Does this action apply to me?
B. What is the Agency's authority for taking this action?
II. Background
III. Summary of the Final Rescission Rule
IV. Responses to Significant Comments
V. Judicial Review
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

This rule does not regulate the conduct or determine the rights of any entity or individual outside the Agency, as this action pertains only to internal EPA practices. However, the Agency recognizes that any entity or individual interested in the EPA's regulations promulgated under the CAA may be interested in this rule. In addition, this rule may be of particular interest to entities and individuals interested in how the EPA conducts and considers benefit-cost analyses (BCA).

B. What is the Agency's authority for taking this action?

The Agency is taking this action pursuant to CAA section 301(a)(1).[1] Section 301(a)(1) provides authority to the Administrator ''to prescribe such regulations as are necessary to carry out his functions'' under the CAA. As discussed in section III of this preamble, the EPA has determined that the Benefit-Cost Rule was not ''necessary''

[1] 42 U.S.C. 7601(a)(1).

and lacked a rational basis under CAA section 301(a), and therefore the EPA lacked authority to issue it; we are accordingly rescinding the Rule.

II. Background

On December 23, 2020, the EPA finalized the Benefit-Cost Rule.[2] The Benefit-Cost Rule was a procedural rule establishing requirements related to the development and consideration of BCA that the EPA would have been required to undertake when promulgating certain proposed and final regulations under the CAA. Specifically, the Benefit-Cost Rule (1) required a BCA for all significant proposed and final regulations under the CAA; (2) codified specific practices for developing the BCA; (3) required certain presentations of the BCA results in the preamble; and (4) required the EPA to consider the BCA in promulgating the regulation except where prohibited. The final Benefit-Cost Rule was effective upon publication in the **Federal Register** based on the procedural-rule exemption from delayed-effective-date requirements in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(A). After publication, several parties filed petitions for review of the Benefit-Cost Rule in the U.S. Court of Appeals for the District of Columbia, and these consolidated cases are currently in abeyance.[3]

On January 20, 2021, President Biden signed Executive Order (E.O.) 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,''[4] which, among other things, directed the EPA to immediately review and consider suspending, revising, or rescinding the Benefit-Cost Rule. Accordingly, the EPA conducted a comprehensive review of both the legal and factual predicates for the Benefit-Cost Rule and, in particular, the need for the regulations that the Agency promulgated in the Benefit-Cost Rule. Based on this review, the EPA determined that the changes to Agency practice required by the Benefit-Cost Rule were inadvisable, not needed, and untethered to the CAA. Therefore, in May 2021, the EPA published an interim final rule rescinding the Benefit-Cost Rule (hereinafter, the ''Interim Final Rule'').[5] The Interim Final Rule became effective on June 14, 2021, which was 30 days after its publication in the **Federal Register**.

While procedural rules are exempt from the notice-and-public-comment requirements in the APA, the EPA nonetheless decided to voluntarily seek post-promulgation public comment on the Interim Final Rule.[6] This final action considers and responds to the public comments the EPA received on the Interim Final Rule. The EPA's process is consistent with Administrative Conference of the United States Recommendation 95–4, which recommends that agencies consider providing post-promulgation notice and comment even where an exemption is justified, be it a substantive rule relying on the ''good cause'' exception to notice and comment, 5 U.S.C. 553(b)(B), or a procedural rule such as this one.[7]

III. Summary of the Final Rescission Rule

In the Interim Final Rule, the EPA concluded that the Benefit-Cost Rule should be rescinded in its entirety. The EPA has reviewed and considered comments received on the Interim Final Rule, as discussed in section IV, but none of the comments received have led the EPA to materially change our view, as explained in the Interim Final Rule, that the Benefit-Cost Rule is not needed and does not further the CAA's goals. As such, the EPA is finalizing the rescission of the Benefit-Cost Rule with this action. Consistent with and as discussed further in the Interim Final Rule, the rationales for rescission are summarized below.

In the Benefit-Cost Rule, the Agency stated that it had authority to promulgate the Rule under CAA section 301(a) because the Rule's additional procedures were necessary to ensure consistency and transparency in CAA rulemakings. However, as discussed in the Interim Final Rule, the Agency failed to articulate a rational basis for the Benefit-Cost Rule and did not explain how the existing CAA rulemaking process had created or was likely to create inconsistent or non-transparent outcomes, *i.e.,* that an actual or even theoretical problem existed. After reviewing each element of the Benefit-Cost Rule, we have determined that the additional procedures required were not needed, useful, or advisable policy changes. In some cases, the new procedures established by the Benefit-Cost Rule could have hindered the EPA's compliance with the CAA and may not have even furthered the Rule's stated purposes of consistency and transparency. Our rationale for rescinding each of the four independent elements of the Benefit-Cost Rule is severable and discussed in the Interim Final Rule and summarized below. In addition, as noted in the Interim Final Rule, the existing public process provides ample ability for the public to participate in the EPA's CAA rulemakings.

First, the EPA has determined that the Agency failed to provide a rational basis to support the Benefit-Cost Rule or explain why the Rule was needed or reasonable. The Benefit-Cost Rule did not provide any record evidence that the guidance and administrative processes already in place presented problems that justified the mandate imposed by the Rule. Indeed, the Benefit-Cost Rule failed to point to a single example of a rule promulgated under the CAA where problems emerged that would have been avoided had the mandate imposed by the rule been in place. Furthermore, there was no discussion of how the requirements of the Benefit-Cost Rule would have improved the Agency's ability to accomplish the CAA's goals to protect and enhance air quality. Moreover, there has been an unbroken, bipartisan, decades-long commitment from Presidential Administrations to conduct BCAs for economically significant regulations issued in the United States. These analyses are rigorous, publicly available, subject to interagency review, and are conducted according to extensive peer-reviewed guidelines from OMB and the EPA. We are therefore finalizing rescission of the Benefit-Cost Rule on the basis that it failed to articulate a rational basis justifying its promulgation.

Second, the Benefit-Cost Rule's expansion of BCA to all ''significant'' CAA rulemakings, rather than just those that are significant under monetary thresholds of E.O. 12866, is unnecessary. The Benefit-Cost Rule greatly expanded the universe of CAA rulemakings for which the EPA would have been required to conduct resource-intensive BCAs without justifying why such expansion was necessary or appropriate. In many cases, rules may be designated ''significant'' by the Office of Management and Budget (OMB) for reasons other than economic significance such that other types of assessments of economic impact are appropriate. Requiring BCA for all rules designated ''significant'' by OMB, even when the primary issues of importance

[2] 85 FR 84130.

[3] *State of New York* v. *EPA,* No. 21–1026 (D.C. Cir.); *Cal. Cmtys. Against Toxics* v. *EPA,* No. 21–1041 (D.C. Cir.); *Envt'l Def. Fund* v. *EPA,* No. 21–1069 (D.C. Cir.). *State of New York* v. *EPA,* No. 21–1026 (D.C. Cir.), Doc. No. 1886762 (Feb. 23, 2021) (abeyance order).

[4] 86 FR 7037 (January 25, 2021).

[5] 86 FR 26406 (May 14, 2021).

[6] *Vt. Yankee Nuclear Power Corp.* v. *Natural Res. Def. Council, Inc.,* 435 U.S. 519, 524 (1978) (''Agencies are free to grant additional procedural rights in the exercise of their discretion.'').

[7] *See* ACUS Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking* (1995).

are not economic, would have unnecessarily complicated the rulemaking process, potentially diverted the Agency's resources from those aspects of the rule that warrant additional consideration (*i.e.,* the reasons why the rule was designated significant), and could have delayed rules needed for protection of public health and the environment. Existing directives under E.O. 12866 and guidance regarding BCAs for economically significant rules, while retaining flexibility for agencies to analyze costs, benefits, and other factors for non-economically significant rules, strike the better balance between agency resources and the information provided by additional economic analysis for such rules. Simply put, a BCA is not warranted for every CAA rule that is designated as significant under E.O. 12866.

Third, the codification of specific practices for the development of BCA is inadvisable because it is contrary to best practices for preparing BCAs and could have prevented the EPA from relying on best available science. As articulated by OMB and EPA guidelines, best practices for conducting a high-quality BCA cannot be established using a set formula, and the Benefit-Cost Rule's codification of specific practices would have prevented situation-specific tailoring of the regulatory analysis to the policies being proposed. In addition, best practices evolve over time, and the Benefit-Cost Rule would have locked the EPA into using outdated practices until those practices were amended via rulemaking, which could have delayed incorporation of new scientific information and methods. Some of the Benefit-Cost Rule's ''best practice'' requirements did not even derive from the EPA's Guidelines for Preparing Economic Analyses (hereinafter ''Economic Guidelines''),[8] OMB's Circular A–4,[9] or the EPA's Science Advisory Board (SAB) advice. As discussed in more detail in the Interim Final Rule, a number of the specific provisions required by the Benefit-Cost Rule, in particular those related to health-benefits assessments, would have promoted particular types of data in a way that could have conflicted with the use of best scientific practices or arbitrarily caused the Agency to disregard important or high-quality data. The Benefit-Cost Rule's attempt to craft a one-size-fits-all approach to BCAs in fact demonstrated the difficulty and inadvisability of codifying specific practices appropriate for every BCA.

Fourth, the Benefit-Cost Rule required the EPA to present net-benefit calculations in regulatory preambles in a manner that would have been misleading and inconsistent with economic best practices. Specifically, the Rule required a presentation of only the benefits ''that pertain to the specific objective (or objectives, as the case may be) of the CAA provision or provisions under which the significant regulation is promulgated.'' 40 CFR 83.4(b). The Rule also required that if any benefits and costs accrue to non-U.S. populations, they must be reported separately to the extent possible. This information is duplicative of existing information provided in EPA's Regulatory Impact Analyses (RIAs) because EPA already presents these types of benefits in disaggregated form in its RIAs, so these presentational requirements would not have provided additional transparency. EPA is careful, however, not to use these disaggregated subsets of benefits in calculating total net benefits. Both EPA and OMB guidelines, and economic best practice generally, are clear that the purpose of a BCA is to assess the economic efficiency of policies, and in order to do so accurately, net benefits are calculated by subtracting total costs from total benefits, regardless of whether the benefits and costs arise from intended or unintended consequences and regardless of the particular recipients of the benefits or costs. Even though the Benefit-Cost Rule did not specifically require incorrect partial net-benefit calculations that excluded certain impacts due to the regulation, we are concerned that retaining the Rule's presentational requirements could have invited such misleading partial calculations. In fact, in one of the rules that was promulgated during the same time period as the Benefit-Cost Rule's requirements were being considered, the EPA used calculations of segregated benefits—like those required under the Benefit-Cost Rule—to create tables of misleading ''net'' benefit calculations (*i.e.,* benefits minus costs) that only accounted for a subset of the rule's benefits.[10]

Fifth, we are rescinding the Benefit-Cost Rule because the Rule did not reconcile its requirement that the Agency ''consider'' in its CAA rulemakings the required BCAs with the various and varied substantive mandates of the CAA. The Benefit-Cost Rule did not even identify the CAA provisions to which it would apply. This identification is critical because the statute, not Agency procedural rules, dictate what the Agency may or may not ''consider'' in the context of exercising authority. For those CAA provisions where EPA is prohibited from considering costs, the Benefit-Cost Rule's requirement to prepare a BCA and include it in the judicially reviewable rulemaking record solely for the purpose of providing ''additional information'' is not necessary to effect any purpose under the Act. Even for those CAA authorities that permit consideration of cost or other economic factors, the Benefit-Cost Rule did not establish why BCA specifically is an appropriate way to consider cost. The rule failed entirely to grapple with the varied ways in which Congress granted authority or directed the EPA whether and how to consider benefits, costs, and other factors, and how the Benefit-Cost Rule's requirement to consider BCA should be reconciled with the need to adhere to particular statutory language and context. As noted in the Interim Final Rule, we are finalizing rescission of the Benefit-Cost Rule's requirement to prepare and consider BCA (followed by a subsequent attempt to reconcile that analysis with the CAA's mandates) in favor of the Agency's current ''statute first'' approach to decision making. That is, we believe the traditional process of statutory interpretation is superior, wherein we first look to the text of the relevant statutory provision to determine whether Congress intended or permitted the Agency to consider cost or economic factors, and, if yes, we then examine the statutory context, legislative history, and nature of the program or environmental problem to be addressed to determine a reasonable manner of considering that cost or economic factor.

Finally, we are finalizing rescission of the Benefit-Cost Rule on the basis that its requirements are not needed with respect to process, and that the pre-existing administrative process, including existing procedures under the APA and, where applicable, CAA section 307(d), provide for ample consistency and transparency. These requirements are more than adequate to accomplish the general good-government goals of ''consistency'' and ''transparency,'' and the Benefit-Cost Rule failed to provide any support for its contention that the pre-existing process was deficient so as to warrant the Rule's new procedures.

[8] U.S. EPA. 2010. *Guidelines for Preparing Economic Analyses. https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses.*

[9] Exec. Office of the President, OMB, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003), *available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[10] See 84 FR 32520, 32572 tbl.10–12 (July 8, 2019).

IV. Responses to Signficant Comments

This section of the preamble summarizes significant comments received on the Interim Final Rule [11] and the EPA's responses to those comments. All comments made on the Interim Final Rule and the EPA's responses can be found in the document, ''Summary of Public Comments and Responses for Rescinding the Rule on Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,'' available in the docket for this rulemaking.

Comment: Some commenters supported retaining the Benefit-Cost Rule and opposed the Interim Final Rule rescinding it. Several of these commenters cited their 2020 comments on the proposed Benefit-Cost Rule, asserting that in those comments, they had raised examples of prior analyses being performed by the EPA that were inconsistent in their approaches or methodologies or inappropriately relied upon a ''misuse of co-benefits.'' The commenters claimed that leaving the Benefit-Cost Rule in place would have addressed their concerns.

Response: The commenters to the Interim Final Rule did not provide in their comments, with any kind of specificity, examples of how the Benefit-Cost Rule would have resolved any problems those commenters had with prior BCAs performed by the EPA. Nevertheless, the EPA has examined the prior comments that were referenced to determine whether any commenter demonstrated that there was a significant problem of inconsistency or transparency that the Benefit-Cost Rule's requirements would have resolved. After examining the rulemaking record for the Benefit-Cost Rule, we do not agree with these commenters that they identified concrete examples of how the Benefit-Cost Rule would have improved their perceived flaws. To the contrary, the comments in support of the Benefit-Cost Rule proposal simply alleged broadly that the EPA had ''historically used inconsistent approaches'' to BCA, that there was a need to ''correct past practices,'' that there was ''inconsistency in methodologies,'' and that EPA had ''misused co-benefits.'' We do not agree that these general complaints about past inconsistency, without any specificity, provide an adequate basis for establishing a concrete problem, nor do they explain how the Benefit-Cost Rule would have addressed any such problem.

Comment: A commenter contended that the EPA should not make a major change, such as rescinding the Benefit-Cost Rule, through an Interim Final Rule. The commenter stated that this action, by itself, is an indication that the EPA has already made up its mind to rescind the rule. The commenter added that, in developing the Benefit-Cost Rule, the EPA went through a proposed rulemaking process, so in rescinding the rule, or revising it, the EPA should go through a similar process and revise the Benefit-Cost Rule only to the extent necessary to address any concerns that remain after properly considering public comments.

Response: Agencies are always free to adopt additional notice-and-comment procedures, but to the extent that the commenter suggests that such procedures were required in this instance, we do not agree. The Benefit-Cost Rule was a procedural rule, *i.e.,* a rule of agency organization, procedure, or practice. A procedural rule does not regulate any party outside of the EPA but instead exclusively governs the EPA's internal process for conducting business. As discussed in section IV of the Interim Final Rule, procedural rules are exempt from the APA's notice-and-comment requirements, and therefore it was permissible and appropriate to make the rescission of that rule effective using an interim final rule. However, EPA recognizes the value of transparency and public input and therefore voluntarily sought public comment on its decision to rescind, consistent with Administrative Conference of the United States Recommendation 95–4, which recommends that agencies consider providing post-promulgation notice and comment even where an exemption is justified, be it a substantive rule relying on the ''good cause'' exception to notice and comment, 5 U.S.C. 553(b)(B), or a procedural rule such as this one.

Comment: Several commenters requested that the EPA revise rather than rescind the Benefit-Cost Rule in its entirety. These commenters said that they do not agree that the issues raised by the EPA were significant enough to warrant rescinding the Benefit-Cost Rule. Some commenters urged the EPA to reconsider each provision of the Benefit-Cost Rule on an individual basis, seek public comment on the issue, and amend the provisions after considering the comments. Another commenter contended that the EPA should have amended the scope of the Benefit-Cost Rule to address concerns raised in the Interim Final Rule regarding burdensome requirements for some non-economically significant rules. One commenter noted that, rather than rescinding the rule, the EPA could have revised the rule to retain some provisions as regulation and left some as guidance, as the Agency's Science Advisory Board (SAB) had suggested as a possible improvement in its comments on the Benefit-Cost Rule. Some commenters contended that EPA's decision to repeal the Benefit-Cost Rule is in direct conflict with the January 27, 2021 memorandum, ''Restoring Trust in Government Through Scientific Integrity and Evidenced-Based Policymaking.'' These commenters stated that ensuring ''evidence-based decisions'' that are ''guided by the best available science and data'' requires the EPA to undertake a rigorous and objective BCA and to present the analysis, including key uncertainties, in a transparent manner.

Other commenters agreed with EPA's decision as explained in the Interim Final Rule that the rule should be rescinded in its entirety. These commenters further stated that fixing the rule through targeted amendments was not viable because the problematic elements were significant and difficult to address in piecemeal fashion. The commenters agreed the problems were substantive and the Benefit-Cost Rule as a whole should be rescinded.

Response: We disagree that the EPA should have revised the Benefit-Cost Rule rather than rescind it. The EPA conducted a comprehensive review of both the legal and factual predicates for the Benefit-Cost Rule and, in particular, the need for an imposition of and codification of ''one-size-fits-all'' requirements governing economic analyses for a large subset of regulations promulgated under the CAA. We do not agree that revision rather than rescission would have resolved our concerns with the Benefit-Cost Rule. The problematic elements of the Rule were significant, and many of those problems extended across the entirety of the rule and could not be excised and resolved on a case-by-case basis. For example, one particularly problematic element of the Benefit-Cost Rule was its codification of methodologies and practices that we think are better suited to guidance. As explained in the preamble to the Interim Final Rule and in section III of this preamble, and as recognized by OMB itself, guidance allows the EPA to tailor economic analyses to the regulatory question and problem at hand, and it also facilitates using up-to-date methodologies in those analyses without first undergoing a notice-and-comment rule revision. Therefore, some

[11] 86 FR 26406.

of the revisions suggested by commenters, such as amending the scope of the Benefit-Cost Rule to exclude non-economically significant rules, would not have addressed this fundamental problem.

With respect the SAB's suggestion, we do not agree that the SAB was specifically endorsing revision of the Benefit-Cost Rule over rescission. The one sentence in the SAB's cover letter in which it ''urges EPA to carefully consider which aspects of BCA should be included in the final [Benefit-Cost] rule versus which aspects should be in guidance,'' should be read in context of the significant and detailed concerns detailed by the SAB with many of the Rule's specific requirements.[12] The more accurate overall message from the SAB's report is that the proposed rule as drafted would have been problematic if implemented, and that at the very least the EPA should consider retaining some requirements as guidance ''given the case-by-case nature of BCA.'' In some instances, the SAB acknowledged that while it was providing specific recommendations regarding how to improve certain sections of the rule, complete overhaul was preferable.[13] We also disagree with the commenters who assert that repealing the Benefit-Cost Rule is in direct conflict with the January 27, 2021 memorandum, ''Restoring Trust in Government Through Scientific Integrity and Evidenced-Based Policymaking.'' To the contrary, the Benefit-Cost Rule was not necessary to making ''evidence-based decisions'' ''using best available science and data,'' and as we have explained, could have hindered that outcome.

Comment: Numerous commenters agreed with the EPA's assertion that the Benefit-Cost Rule codified certain practices that conflicted with the best science, particularly for quantifying the health benefits of a rule. Other commenters disagreed with the EPA's assertion that the Benefit-Cost Rule codified certain practices that conflicted with the best science. These commenters asserted that the Benefit-Cost Rule directed the EPA to base its decisions on the best available science and in accordance with best practices from science and fields such as economics. The commenters argued that this requirement was a broadly supported principle for sound regulatory decision making that has enjoyed bipartisan support for decades, as stated in E.O. 13563 and E.O. 12866. One commenter asserted that the Benefit-Cost Rule required the use of best practices for risk assessment/characterization and would have prevented the Agency from taking shortcuts in analyses or applying assumptions that are not identified or supportable.

Response: We agree that the EPA should use the best available scientific information and best scientific practices for BCAs. However, we disagree that the Benefit-Cost Rule was necessary to promote best practices. Indeed, in section III.C.3 of the preamble of the Interim Final Rule, we provided several examples of how implementation of some of the Benefit-Cost Rule's requirements could have undermined the scientific integrity of the EPA's BCAs for CAA regulations rather than strengthened them. We also disagree that the Benefit-Cost Rule's requirements regarding risk assessments and characterization would have prevented the Agency from taking shortcuts or applying unsupportable assumptions. As discussed in section III.C.3 of the Interim Final Rule, those requirements could have led to inferior selection of health studies or the potential exclusion of some health endpoints altogether. By imposing a requirement that studies or analyses used to quantify concentration-response relationships should ''consider how exposure is measured,'' and favor ''particularly those that provide measurements at the level of the individual and that provide actual measurements of exposure,'' the Benefit-Cost Rule introduced a bias against methods that in some cases may have been both higher quality and more appropriate by discouraging consideration of studies that combine both measured and modeled concentrations.[14] We have also noted how, rather than codifying a best practice, the Benefit-Cost Rule's requirement to limit assessment of human health benefit endpoints to instances where there is ''a clear causal or likely causal relationship between pollutant exposure and effect'' was unsupportable. It did not derive from the Economic Guidelines, Circular A–4, or SAB advice, and in fact was criticized by the SAB.[15] Finally, as noted in the Interim Final Rule, we are concerned that the Benefit-Cost Rule's imposition of highly specific and stringent requirements for assessing benefits in conjunction with substantially less stringent requirements for assessing costs would have led to unbalanced BCAs. Moreover, these requirements only applied to health benefits, which created an inconsistency with other categories of benefits (*e.g.,* visibility, ecological effects) that were not subject to the requirements. By rescinding the Benefit-Cost Rule, the EPA is not forswearing BCAs, which it has undertaken for decades consistent with the Executive Orders cited by the commenters. Rather, we think undertaking those BCAs pursuant to guidelines issued by EPA and OMB, which provide for flexibility and tailoring in order to permit incorporation of evolving science and best practices, will produce higher quality analyses than if EPA conducted BCAs subject to the Benefit-Cost Rule's rigid codification of particular practices that were frozen at a moment in time, and in some cases, were substantively problematic.

Comment: Some commenters agreed with the EPA's assertion that the Benefit-Cost Rule would have locked the EPA into using outdated practices until the rule could be amended. Another commenter said the Benefit-Cost Rule would have weakened the integrity of the BCA process for CAA regulations by hindering EPA's ability to use the best scientific data available. Another commenter asserted that if the Benefit-Cost Rule had conflicted with future changes to the Economic Guidelines, the EPA would have had to undergo a lengthy notice-and-comment process to make updates to its rule, as opposed to just updating the Economic Guidelines already in existence, and this process could seriously delay the EPA's ability to adapt to changes in best practices and could hinder the promulgation of public health and environmental protections.

Other commenters argued that the Benefit-Cost Rule would not have stopped the adoption of new practices, but instead would have required the EPA to notify the public and seek public comment on the basis for the Agency's decision to adopt the new procedures. Some of these commenters said that 40 CFR 83.3(a)(11)(v) of the Benefit-Cost Rule specifically authorized departures from the Rule's requirements if the EPA

[12] U.S. EPA SAB. 2020. *Science Advisory Board (SAB) Consideration of the Scientific and Technical Basis of EPA's Proposed Rule titled ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Rulemaking Process.''* EPA–SAB–20–012. September 30. (''SAB (2020)''), *available at https://sab.epa.gov/ords/sab/f?p=100:12:6591070354315:::12::.*

[13] SAB (2020) at 12.

[14] 85 FR 84155 (40 CFR 83.3(a)(9)(iii)(D)).

[15] *See, e.g.,* SAB 2020 at 2–7 (suggesting that there are a number of ways to interpret causal relationship and the Benefit-Cost Rule is not clear what evidence would be acceptable to demonstrate causality), 8 (recommending that the EPA allow inclusion in its benefits analyses of effects for which causal or likely causal relationships may be less certain, but the impact would be substantial).

provided a ''reasoned explanation,'' including a discussion of the ''likely effect of the departures on the results of the BCA.'' The commenters argued that, in response to changes in best practices, the EPA could at any time simply amend the Rule separate from or in parallel with a new covered CAA rulemaking after seeking notice and comment and providing a reasoned explanation. The commenters asserted that rescission of the Benefit-Cost Rule allows the EPA to make ad hoc decisions without notification or explanation. Another commenter contended that the Benefit-Cost Rule did not force the EPA to revise the rule if best practices change over time. The commenter pointed out that the Benefit-Cost Rule did not provide a specific definition of best practices, and the requirements of 40 CFR 83.3(a)(1) through (12) were predominantly general in nature without prescribing exact methods. The commenter said that many of the requirements in 40 CFR 83.3(a) addressed what information the EPA was required to provide, not the specific methodology the EPA had to use to estimate benefits and costs.

Response: We agree that with the Benefit-Cost Rule in place, if the latest or best scientific practice differed from the Rule's requirements, the EPA would have been required to amend the Rule in order to be consistent with best practice. The process of revising a rule often takes a year or more to complete, which would have prevented the EPA from keeping up with evolving best practices and required the EPA to rely on potentially outdated methods until a revised rulemaking could be completed. We maintain this is inconsistent with making decisions based on the best scientific data available. As discussed in section III.C.2 of the Interim Final Rule, by freezing and defining what constituted ''best practices'' at a single point in time, the Benefit-Cost Rule elevated ''consistency'' over the exercise of sound judgment based on latest scientific knowledge and, given that revision by rulemaking could take a long time, would have slowed or discouraged progress in the development and use of newer and better methods. Promulgating updates to the Benefit-Cost Rule every time the Rule became outdated ''in parallel with'' substantive, statutorily required CAA rules would have been no small regulatory burden; it would have required a significant amount of agency resources to do so and created uncertainty in the CAA rule, by linking that rule to an unsettled regulatory change to the Benefit-Cost Rule that was itself open to challenge and judicial review.

We also do not agree with commenters that the requirement in 40 CFR 83.3(a)(11)(v) that the EPA include in every BCA ''[a] reasoned explanation for any departures from best practices in the BCA, including a discussion of the likely effect of the departures on the results of the BCA'' was an authorization for the Agency to diverge from the Benefit-Cost Rule. That provision states that the EPA has to explain why it has diverged from ''best practices,'' not from the Benefit-Cost Rule. ''Best practices'' is a term not defined in the Benefit-Cost Rule, and is on its face subject to interpretation. Far from providing clear guidance to the Agency on when it would have been permitted to take an updated approach to BCA absent a change to the Benefit-Cost Rule, we think that provision itself bred a great deal of uncertainty—how, for example, is the Agency to know whether it has adequately explained the ''likely effect'' of its departures from best practices (which, if the Agency is taking such departure, it likely does not believe to *be* ''best practice'')? As further evidence of how best practices change over time, we note that the Economic Guidelines are in the process of being updated as part of a periodic review undertaken by the EPA. In addition, President Biden issued a memorandum on January 20, 2021, on Modernizing Regulatory Review,[16] which directs OMB in consultation with other agencies to recommend revisions to Circular A–4. The confluence of updates to these two documents, which provided the ostensible underpinning to the regulatory requirements of the Benefit-Cost Rule, only highlights the misguided nature of attempting to freeze ''best practices'' at one moment in time.

Finally, we do not agree with the commenters who asserted that the regulatory requirements of 40 CFR 83.3(a)(1) through (12) were predominantly general in nature. For example, as noted in the Interim Final Rule, those provisions contained highly prescriptive (but in many cases vague and confusing) requirements for benefits assessment and uncertainty analyses (with no corresponding requirements for how costs are calculated and considered). In contrast, since guidance is inherently less prescriptive than regulation, it can be more flexible in allowing agencies to keep up with the evolution of best practices to support CAA regulations.

Comment: Some commenters agreed with the EPA's assertion that the Benefit-Cost Rule was inconsistent with the mandates in the CAA that prohibited the EPA from considering cost for some types of rulemakings. They agreed with the EPA that the Benefit-Cost Rule's rationale for including BCA in the records and preambles of rulemakings in which the agency is prohibited from considering cost is not ''necessary'' to carry out the statute within the meaning of CAA section 301(a).

Other commenters disagreed with the EPA's assertion that the Benefit-Cost Rule was inconsistent with the mandates in the CAA that prohibited the EPA from considering cost for some types of rulemakings. These commenters argued that the Benefit-Cost Rule applied with respect to a significant rule implementing the CAA only when the CAA required or permitted consideration of cost. These commenters contended that the Benefit-Cost Rule did not violate the CAA because it required (at 40 CFR 83.2(b)) EPA to consider the results of a BCA except in those circumstances where the applicable CAA provision(s) prohibited that consideration. These commenters added that when not prohibited by the statute, the Benefit-Cost Rule left the EPA significant discretion in how it would consider the BCAs in individual CAA rules to account for the significant differences among statutory provisions as long as the Agency provided the public with a description in the preamble. Another commenter said that 40 CFR 83.4(d) provided the EPA with clear direction and appropriate discretion in when and how to consider the results of BCAs in making regulatory decisions.

One commenter stated that, while the EPA may be prohibited from considering costs in some cases, such as with revisions to the NAAQS, this did not negate the need for the Rule's requirements with regard to how the EPA calculates benefits. The commenter also stated that the EPA routinely presents cost information in addition to benefits even in cases where the EPA is prohibited from considering costs, such as in the RIA for the 2015 ozone NAAQS revision. The commenter contended that such information is still beneficial in that it informs the public on the potential cost impacts of the EPA's regulatory actions, even if the EPA cannot directly consider those cost impacts. Another commenter argued that the actual text of the CAA's substantive authorities (and most other statutory provisions) rarely prohibits benefit-cost balancing and arguably may require it. The commenter stated that Administrations have recognized that

[16] 86 FR 7223.

the public has a right to know the projected benefits and costs of a new rule even if the underlying statutory provision (as in the case of CAA section 109 for setting NAAQS) has been interpreted to prohibit the consideration of costs. The commenter said elevating BCA practices is consistent with the recent Supreme Court decisions on BCA, particularly *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208 (2009) and *Michigan* v. *EPA,* 135 S. Ct. 2699 (2015). The commenter asserted that these decisions apply the fundamental principle, established in *Motor Vehicle Mfrs. Ass'n, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463U.S. 29, 43 (1983), that it is arbitrary for an agency to neglect an important aspect of a regulatory problem. Another commenter also pointed out that *Michigan* v. *EPA,* 135 S. Ct. 2699 (2015), concluded that when interpreting CAA section 112(n)(1)(A), ''Read naturally in the present context, the phrase 'appropriate and necessary' requires at least some attention to cost.''

Response: We disagree that provisions in the Benefit-Cost Rule's regulations granting EPA discretion in how and when to consider the results of the mandated BCA resolves the problems presented by the Rule. Where the CAA prohibits the EPA from considering cost in implementing a provision, it cannot be ''necessary'' to require the EPA to conduct a BCA and include it in the decisional rulemaking record. The EPA is already conducting BCAs pursuant to Executive Order in situations where it is appropriate to do so, so commenters' assertions that the Benefit-Cost Rule is necessary for public information ring hollow, and the commenters did not address how incorporation of a BCA into the agency's rulemaking record where Congress has instructed the Agency not to consider cost is consistent with the CAA. As one commenter pointed out, the Agency's current practice for rules like the 2015 ozone NAAQS, where the rule is economically significant but where the statute does not permit the Agency to consider cost, is to conduct RIAs but not to include those in the record. The Benefit-Cost Rule's requirement that the EPA include the BCA in its record is a distinct change from its current practice, and is both unnecessary and inappropriate given the limits of EPA's statutory authority to consider cost.

We are also unconvinced by the commenters who assert that the Benefit-Cost Rule is not inconsistent with the CAA for those rules promulgated under provisions that permit consideration of cost just because the Rule left it to the Agency's discretion *how* it should consider cost. The fact remains that the Rule did not explain why, for any particular CAA provision, BCA is the best or even a reasonable way for the agency to consider cost. For CAA rules that would have been impacted by the Benefit-Cost Rule, the EPA believes it would have needed to justify why complying with the Rule's requirement to conduct and consider a BCA was reasonable under the given CAA provision; the existence of the Agency's own procedural rule requiring analysis and consideration of a factor does not create statutory authority to consider a factor that Congress did not intend the Agency to consider. We do not agree that what would have been a case-by-case post-hoc rationalization of the Benefit-Cost Rule as it applied to any particular provision is superior to the existing process of statutory interpretation, where we first look to the CAA to try to ascertain those factors Congress intended the Agency to consider, and whether the statutory provision suggested how the EPA should consider any such factor. We disagree that any of the court decisions cited by the commenters evince any general principles that ''elevate'' BCA over any other economic analysis. In *Entergy,* the Court upheld as reasonable the EPA's *choice* to consider cost using a BCA given particular statutory language in the Clean Water Act. In *Michigan,* the Court spoke only to whether the EPA needed to consider cost at all in implementing a CAA provision and explicitly did not opine on *how* the Agency might reasonably consider cost. The *Michigan* Court's holding that a particular CAA phrase required the Agency to consider cost is more consistent with the EPA's findings today that it should look first to the statute to determine what factors are required under a *State Farm* analysis, rather than start from an Agency-generated procedural rule that articulates a particular type of analysis irrespective of statutory text.

Comment: Several commenters agreed with the EPA's assertion that the administrative processes already in place before the Benefit-Cost Rule was promulgated provide ample consistency and transparency in the rulemaking process. One commenter asserted that rather than increasing transparency, the Benefit-Cost Rule's requirements would have obscured the basis of the EPA's decisions. Another commenter said that the Benefit-Cost Rule did not support its contention that the pre-existing procedural requirements established by Congress were deficient. A commenter also noted that the EPA is already required to transparently share its data, relevant statutory interpretations, and methodology underlying its rulemaking, and concerned parties are able to supplement that data, raise arguments that BCA should be integrated into a rulemaking, make other recommendations for consideration of costs, or share any concerns that the Agency has been insufficiently transparent. Another commenter asserted that the EPA failed to articulate any inconsistency or lack of transparency in existing BCAs that would call for the drastic changes the Benefit-Cost Rule would impose, and that the EPA violated numerous executive orders by, for example, failing to consult with States on the Benefit-Cost Rule's federalism implications and failing to assess regulatory costs and environmental justice impacts.

Other commenters disagreed with the EPA's assertion that the administrative processes already in place before the Benefit-Cost Rule was promulgated provided ample consistency and transparency in the rulemaking process. Several of these commenters referenced comments they had submitted on the proposed Benefit-Cost Rule. The commenters reiterated their comments on the proposed Benefit-Cost Rule that an overriding goal of the Agency should be to present data regarding benefits and costs to decisionmakers and the public as objectively and accessibly as possible.

Some commenters also pointed out that the Benefit-Cost Rule included additional procedural requirements to increase transparency in the presentation of results, such as providing a summary of the overall results of the BCA. A commenter noted that while the EPA cannot consider the result of the BCA in setting NAAQS, the RIA does play an important role in informing the public of the likely costs and benefits of setting a new standard. The commenter argued that the Benefit-Cost Rule further advanced transparency by requiring more objective analysis and explanation of uncertainties in the benefit and cost estimation. The commenter added that the analyses should be consistent with Circular A–4, establishing the appropriate baseline, analyzing alternatives, and estimating benefits and costs. The commenter added that rules should be fully transparent about the many uncertainties underpinning their cost and benefit estimates, including the many embedded policy assumptions made in developing the various estimates of costs and benefits associated with a rulemaking and the significance of the impact of those

assumptions on the final policy decision. Another commenter asserted that if the EPA decides to rescind the Benefit-Cost Rule, then the EPA must still maintain transparency in calculating and reporting the ancillary benefits associated with regulatory actions under the CAA and all other sources of regulatory authority.

Response: We disagree that the administrative process already in place before the Benefit-Cost Rule was promulgated is inadequate. For CAA rules that are subject to the rulemaking requirements of CAA section 307(d), which include many of the major CAA rulemakings that would have been subject to the Benefit-Cost Rule, the CAA already requires proposed rulemakings to include a statement of basis and purpose, which must include ''(A) the factual data on which the proposed rule is based; (B) the methodology used in obtaining the data and in analyzing the data; [and] (C) the major legal interpretations and policy considerations underlying the proposed rule.'' CAA section 307(d)(3). The CAA also requires that these statements ''set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee, . . . and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences.'' *Id.* Finally, the CAA already requires, for rules subject to CAA section 307(d), that ''[a]ll data, information, and documents . . . on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.'' *Id.* Those CAA rulemakings that are not subject to these specific requirements are still subject to the requirements that apply to all proposed rulemakings under the APA, which similarly require the proposal to include ''reference to the legal authority under which the rule is proposed; and either the terms or substance of the proposed rule.'' APA section 553(b). EPA must also provide an opportunity for comment on proposed rulemakings and respond to all significant comments, and all final rules are subject to judicial review for EPA's failure to adequately respond to significant comments.

We agree that BCA requirements and analyses should be clear and transparent, and we agree that EPA should follow OMB Circular A–4 guidance to present data regarding benefits and costs to decisionmakers and the public as objectively and transparently as possible. We disagree that this was not the case prior to the promulgation of the Benefit-Cost Rule, and we disagree that EPA's analyses of its regulatory actions are inconsistent with OMB Circular A–4. Then, as now, in performing analyses of regulatory actions, the EPA follows the guidance laid out by OMB Circular A–4 and the Economic Guidelines in areas such as identifying the baseline, analyzing alternatives, and estimating costs and benefits, including ancillary benefits. The analyses and results are subject to internal review and an interagency review process under E.O. 12866 that involves application of the principles and methods defined in Circular A–4. The results of the analyses, documented in RIAs, are also reviewed by OMB to ensure consistency with Circular A–4. While BCAs are similar for different rules, as instructed in Circular A–4 and the Economic Guidelines, the analyses are often tailored to the specific source category by considering a number of variables, such as the type of pollutants being controlled, available data, and the location of the emission sources.

Additionally, we disagree with commenters who contended that the Benefits-Cost Rule would have increased transparency in the presentation of results. The EPA already disaggregates benefit and cost estimates in BCAs, so these narrow presentational requirements do not provide additional transparency. As discussed in the Interim Final Rule, the Benefits-Cost Rule would have required the preambles of significant proposed and final CAA regulations to include a separate presentation that excluded certain categories of benefits that Circular A–4 and the Economic Guidelines indicate should be considered. This could have resulted in misleading net-benefit calculations that would have inaccurately characterized the benefits of a rulemaking and would have called into question the significance of the excluded benefits.

We disagree that RIAs are difficult to find as they are always included in the docket for significant rulemakings. Additionally, all of the RIAs are available online, and many can be found at EPA's website sorted by source category: *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/regulatory-impact-analyses-air-pollution.* While the RIAs are technical in nature, the EPA takes steps to provide information to aid in their interpretation by the public.

We also note that the overall summary of BCA results that one of the commenters supports, which present the overall net benefits associated with a rulemaking, are already recommended by Circular A–4 and are thus included in the RIAs for our rulemakings. The contents of the summary tables already provided by the EPA are consistent with the guidance for such summary tables in Circular A–4 for all rulemakings. For significant rules, the EPA also follows Circular A–4 procedures that require presenting a formal quantitative analysis of the relevant uncertainties about benefits and costs.

Comment: Some commenters agreed with the EPA that the Benefit-Cost Rule's presentation requirements would be misleading. These commenters supported the EPA's assertion that requiring a separate presentation that excluded certain categories of benefits that Circular A–4 and the Economic Guidelines indicate should be considered could call into question the significance of those benefits without justification. They contended that excluding co-benefits from a presentation of benefits would violate established economic principles, established best practices, and longstanding practices of previous administrations. One commenter cited *Michigan* v. *EPA,* stating that in its view, the Supreme Court held that the EPA needed to consider all advantages and disadvantages in deciding whether a regulation is appropriate, such as in the case where a regulation controls emissions but has the indirect effect of causing new health harms.

Another commenter noted that, out of the hundreds of pollutants the EPA regulates under the CAA, the EPA only has sufficient information on particulate matter, and more than 90 percent of all benefits that the EPA quantifies in its BCAs are attributable to this one pollutant. The commenter stated that when significant benefits are missing from the monetized estimate, calculating a number that meaningfully represents a rule's net benefits is simply a logical impossibility, and any calculation that purports to do so is, as OIRA itself acknowledges, ''misleading'' at best.

Other commenters opposed rescinding the Benefit-Cost Rule's requirements regarding the presentation of ancillary benefits and non-domestic benefits. One commenter defended the Benefit-Cost Rule on the basis that the Rule did not prescribe any specific requirement as to how EPA must consider ancillary benefits or provide a formula for when a rule ''passes'' a benefit-cost test; the Benefit-Cost Rule only required the EPA to better inform the public about basic information contained in BCAs and to differentiate in a clear fashion what the ancillary benefits are in a given rule. Other commenters stated that the Benefit-Cost Rule's requirement to present statutory-

objective benefits separately from ancillary co-benefits and non-U.S. based benefits would enhance transparency and would not limit the Agency's ability to recognize and account for these benefits. Another commenter contended that, without the required clarity and accounting for the sources of the benefits, the public and decisionmakers are more likely to be misled in understanding the nature of the benefits and whether those benefits could have been achieved more efficiently under other provisions of the statute. A commenter re-iterated its previous comment on the proposed Benefit-Cost Rule that presenting disaggregated cost and benefit information allows for evaluation and consideration of possibly disproportionate costs on one population from a rule where the benefits are primarily focused on another population. The commenter provided an example where it asserted that the EPA's BCA for the Clean Power Plan estimated benefits using the global social cost of carbon but compared those benefits to costs within the U.S. The commenter asserted that such a comparison was misleading and could have caused parties to not question EPA's justification of the Clean Power Plan when they might have if the EPA had disaggregated the benefits and costs as required by the Benefit-Cost Rule. Another commenter contended that estimates of global benefits should be reported separately in a manner consistent with Circular A–4. The commenter added that the EPA's failure to abide by OMB Circular A–4 by reporting only global benefits resulted in analyses that compared U.S. costs with global benefits—an asymmetry that should be fully disclosed.

Some commenters contended that the EPA used ancillary benefits to justify rules that did not quantify emission reductions or that showed only minimal emission reductions from pollutants directly regulated. Another commenter cited two greenhouse gas regulations, the EPA's Phase 2 rule for Medium and Heavy-Duty Engines and Vehicles and the Clean Power Plan, where the EPA estimated substantial net economic benefits due to the inclusion of the non-climate effects of climate policies as co-benefits. Another commenter added that the EPA used ancillary benefits to support six major CAA rules that did not quantify direct benefits, and in 21 of 26 major non-particulate matter rulemakings analyzed from 1997 to 2011, the particulate matter ancillary benefits accounted for more than half of the total benefits. A commenter contended that reliance on co-benefits to justify regulatory action circumvents Congressional intent because it disregards the target of the underlying statutory provision and circumvents the substantive focus and procedural safeguards established under the law. The commenter added that regulation through co-benefits also undermines the very purpose of BCA by obscuring the question of whether the proposed action accomplishes its intended purpose in a reasonable and resource-efficient manner. One commenter suggested that the EPA can avoid using cost-ineffective ''co-benefits'' in the BCA by requiring a robust regulatory baseline that reflects all projected federal and state emission reductions, as well as a robust alternatives analysis that outlines the opportunity costs of pursuing ''co-benefits'' through sub-optimal, if not unnecessary, measures to achieve standards.

Response: At the outset, we note that, by definition, a BCA includes all the costs and benefits of a rulemaking, *i.e.,* the net benefits of a regulatory change, in order to ascertain the economic efficiency of that change. We believe some commenters are mistaken in their understanding of how the EPA currently presents net benefits and also what the Benefit-Cost Rule required. To clarify, the EPA already disaggregates benefit and cost estimates in its RIAs, per the instructions in Chapter 11 of the Economic Guidelines (Presentation of Analysis and Results) and the OMB Circular A–4 section on characterizing uncertainty in benefits, costs, and net benefits. The results of BCAs are presented in RIAs. Both guidance documents are clear that net benefits are calculated by subtracting total costs from total benefits, regardless of whether the benefits and costs arise from intended or unintended consequences of the regulation. Section 6 of Circular A–4 instructs that the ''analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks,'' where an ancillary benefit is defined as a ''favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking.'' [17] This is particularly important in instances when unintended effects are important enough to potentially change the rank ordering of the regulatory options considered in the analysis or to potentially generate a superior regulatory option with strong ancillary benefits and fewer countervailing risks. Circular A–4 also notes that, ''In some cases the mere consideration of these secondary effects may help in the generation of a superior regulatory alternative with strong ancillary benefits and fewer countervailing risks.''

In our view, the Benefit-Cost Rule's requirements would not have provided additional transparency, and we are concerned that the Rule's requirements may have led to misleading net-benefit calculations. The Benefit-Cost Rule required preambles of affected rules to include a summary of both the overall BCA results as well as an additional reporting of subsets of the total benefits of the rule. Specifically, the Benefit-Cost Rule required a presentation of only the benefits ''that pertain to the specific objective (or objectives, as the case may be) of the CAA provision or provisions under which the significant regulation is promulgated.'' The Benefit-Cost Rule also required that if any benefits and costs accrue to non-U.S. populations, they must be reported separately to the extent possible. These presentational requirements are duplicative of information the EPA already presents in its RIAs, so they would not have provided additional transparency. If, however, these subsets of benefits were compared to total costs and deemed to be some type of limited net-benefits calculation, we think that application of the information would be misleading and contrary to best economic practice. In addition, requiring a separate presentation that excluded certain categories of benefits that Circular A–4 and the Economic Guidelines indicate should be considered might lead the public to question the significance of those benefits without any justification.

The remainder of the comments summarized above are outside the scope of this action, and the question of whether the EPA should rescind the Benefit-Cost Rule. Specifically, with respect to the suggestion that the EPA should include in its baselines projected federal and state emission reductions, the Benefit-Cost Rule would not have changed how the Agency calculates baselines, and we do not agree that the commenter's suggestion would be consistent with recommended guidelines or advisable, to the extent that the commenter is including in ''projected'' reductions any that are not finalized and on-the-books. The EPA follows Circular A–4 and the EPA's Economic Guidelines, which direct the EPA to develop baselines that include all significant projected federal emission reductions for fully promulgated rules and the future impacts of state regulation to the extent they are known

[17] We note that the specific term used in Circular A–4 is ''ancillary benefits'' and not ''co-benefits.''

and on the books at the time of the rulemaking.

Regarding the suggestion that the EPA conduct a ''robust alternatives analysis'' looking at lost opportunity costs of pursuing co-benefits through ''sub-optimal'' if not unnecessary measures, the comment is unclear but also appears to be beyond the scope of this action. We disagree that the EPA has designed regulatory options to meet its statutory obligations for the purpose of pursuing reductions in other pollutants (or ancillary benefits). It is simply a fact that many of the control technologies designed to reduce emissions of specific pollutants also happen to reduce emissions of other pollutants, in part because sources that are targeted under the Act often tend to emit many kinds of pollutants and control of one pollutant can often result in reductions of other non-targeted pollutants.

Moreover, we disagree with comments that the EPA used ancillary benefits to justify regulations or circumvent Congress, but in any case, the Benefit-Cost Rule's requirement to report certain subsets of benefits separately would not have addressed these concerns. In general, the Agency undertakes RIAs in order to comply with E.O. 12866. Those Clean Air Act rulemaking RIAs, in almost every instance, are *not* part of the Agency's record basis for the action. They are not included in the Agency's record basis for the action because they are *not* used to justify the Agency's decision making. The net-benefits calculations in RIAs, which, consistent with Circular A–4 and the Economic Guidelines, include *all* benefits, are provided in order to comply with E.O. 12866 and for illustrative and informational purposes only. Therefore, even if the monetized particulate matter benefits associated with a number of CAA rules were greater than the monetized benefits for any other pollutant, it does not follow that the EPA justified promulgation of these rules based on particulate matter benefits. Instead, it indicates that the Agency may have more data and information to monetize the benefits of reducing that particular pollutant and that it is extremely common for required emissions controls to result in ancillary benefits.

Commenters cited two examples of EPA RIAs that they claimed would have been conducted differently had the Benefit-Cost Rule's presentational requirements for ancillary benefits been in place—the 2016 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Rule and the 2015 Clean Power Plan, but we do not agree. Both examples adhered to OMB Circular A–4. The RIAs provided separate reporting for all categories of both benefits and costs (see summary beginning on page 8–71 of the Phase 2 Rule RIA and Tables ES–6 through ES–8 and additional details in Chapter 4 of the Clean Power Plan RIA). For example, for the Phase 2 Rule RIA, benefits in the form of savings in fuel expenditures, increased vehicle use associated with the fuel economy ''rebound'' effect, benefits of greenhouse gas emission reductions, benefits of non-greenhouse gas emissions reductions, and the economic value of improvements in U.S. energy security are separately reported. We also disagree with the commenter who cited the Clean Power Plan RIA's estimation of climate benefits as an example of a misleading analysis that could have caused parties to not question EPA's justification of the Clean Power Plan when they might have if the EPA had disaggregated the climate benefits as required by the Benefit-Cost Rule. In the RIA, the EPA strove to be very transparent and provided a lengthy discussion of why EPA appropriately centers attention on a global measure of the social cost of carbon when estimating climate benefits resulting from reductions in this global pollutant. In addition, the Agency clearly stated that the monetized benefits analysis was not EPA's justification for the rule. As explained in the preamble for the final rule, ''As required under Executive Order 12866, the EPA conducts benefit-cost analyses for major Clean Air Act rules. While benefit-cost analysis can help to inform policy decisions, as permissible and appropriate under governing statutory provisions, the EPA does not use a benefit-cost test (*i.e.,* a determination of whether monetized benefits exceed costs) as the sole or primary decision tool when required to consider costs or to determine whether to issue regulations under the Clean Air Act, and is not using such a test here.''

Comment: One commenter noted that the Benefit-Cost Rule's limits on the types of scientific data that the EPA can consider, as well as its prescriptions regarding the presentation of certain categories of benefits, would have impeded the adoption of additional public health protections that are critically needed to ensure breathable air to overburdened communities. Some commenters stated that the Benefit-Cost Rule's failure to undertake any analysis of these potential environmental justice impacts is directly contrary to the EPA's mission under the CAA. Some commenters asserted that the Benefit-Cost Rule would have interfered with the EPA's efforts to address distributional and environmental justice impacts. These commenters said that rescinding the Benefit-Cost Rule removed an unnecessary and inappropriate impediment to the Agency's rigorous pursuit of its mission, including its ability to advance environmental justice. The commenters asserted that the Interim Final Rule reduced this risk and associated negative environmental health and safety risks that often disproportionately affect children and residents of environmental justice communities. Some commenters said that the Interim Final Rule was fully in line with the Administration's commitment to advancing environmental justice, both broadly and through specific agency actions. Another commenter contended that the Benefit-Cost Rule disregarded the complex ways in which pollutants interact within and across environmental media, thereby undermining environmental protections and the existing regulatory programs that are essential to public health, protection of ecosystems and wildlife, and local economies.

Some commenters argued that the EPA's development of the Benefit-Cost Rule did not adequately reflect the mandates of E.O. 12898 and 13045 or comply with the required analysis. A commenter contended that E.O. 12898 applies to programs, policies, and activities, and the Benefit-Cost Rule was clearly a policy, and therefore, should have been subject to E.O. 12898 directives to consider environmental justice. One commenter stated that the Benefit-Cost Rule would have codified value judgments that could impact the evaluation and development of regulations that can significantly affect health risks to children and the pollution burdens on environmental justice communities. Another commenter asserted that aggregating those health benefits that can be quantified overlooks communities of color that have been subjected to racist practices, such as redlining, that have confined them to pollution hotspots or areas of disinvestment. Another commenter said that the Benefit-Cost Rule would have applied benefits as an average across societies instead of a distributional analysis and that this was extremely problematic and even unethical because the approach masks disparities in the location of polluting facilities and resultant air pollution (and health outcomes).

Other commenters said that ongoing efforts are needed to ensure that the EPA appropriately considers

environmental justice implications moving forward. A commenter asserted that the EPA failed to recognize any environmental justice considerations in both its reasoning for rescinding the Benefit-Cost Rule and its explanation for returning to the pre-existing BCA process. The commenter argued that building environmental-justice considerations into the BCA process is needed to ensure that the EPA's future CAA actions do not re-enforce the existing pollution-exposure discrepancies underserved communities face. Similarly, another commenter asserted that low-income communities and communities of color have long been disproportionately harmed by air pollution and other forms of environmental degradation. The commenter added that the Benefit-Cost Rule would have obscured environmental-justice implications because the EPA's BCA would be required to focus on calculated net benefits of actions and would ignore distributional equities. Another commenter requested that the EPA promulgate a better Benefit-Cost Rule to truly realize equality under the law and environmental justice—a rule that accurately accounts for cumulative and aggregate impacts of pollutants on overburdened communities and gives unquantifiable and/or non-monetary harms the attention they deserve.

Response: The EPA agrees that the Benefit-Cost Rule did not address the environmental justice impacts raised by the commenters. While this final rule rescinding the Benefit-Cost Rule will not directly address environmental justice impacts, it should be noted that a cornerstone goal of the EPA is to provide an environment where all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live, learn, and work.

V. Judicial Review

Section 307(b)(1) of the CAA indicates which federal courts of appeals are the proper forum for petitions of review of final actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit for (i) ''Any nationally applicable regulations promulgated, or final actions taken, by the Administrator'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

This final action is ''nationally applicable'' within the meaning of section 307(b)(1). Pursuant to CAA section 307(b), any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

VI. 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 not a significant regulatory action as defined in Executive Order 12866. The EPA does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of agency procedure and practice. EPA notes the release of E.O. 14094 after issuance of the interim final rule, which amended E.O. 12866. The discussion in this final action relates to interpretation of E.O. 12866, which was the governing executive order for the duration of when the rule was in effect. The same reasoning applies to the updated definitions contained in E.O. 14094. That is, the Benefit-Cost Rule expanded the universe of CAA rulemakings for which the EPA would be required to conduct BCAs without justifying why such expansion was necessary or appropriate.

B. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

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 would not impose any requirements on small entities. This action would not regulate any entity outside the federal government and is a rule of agency procedure and practice.

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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. 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 concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal

agencies, to the greatest extent practicable and permitted by law, to make environmental justice 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.

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action has no current or projected monetized costs or benefits nor does it stipulate any changes that may adversely affect people of color, low-income populations and/or Indigenous peoples. This rule pertains only to internal EPA practices in how the EPA conducts and considers benefit-cost analyses. While this rule does not directly address environmental justice impacts, it should be noted that a cornerstone goal of the EPA is to provide an environment where all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live, learn, and work.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 40 CFR Part 83

Environmental protection, Administrative practice and procedures, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

PART 83—[REMOVED AND RESERVED]

■ For the reasons stated in the preamble, and under the authority of 42 U.S.C. 7601, the EPA removes and reserves 40 CFR part 83.

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BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2525, 2526, 2527, 2528, 2529, and 2530

RIN 3045–AA66

National Service Trust Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) is finalizing revisions to its National Service Trust regulations. The National Service Trust is an account from which AmeriCorps pays education awards to eligible AmeriCorps participants and interest on qualified student loans for AmeriCorps participants during their terms of service in approved national service positions. This rule improves the clarity of regulations applicable to education awards through use of consistent terminology and more transparent procedures for extensions, transfers, and revocations of education awards; and increases flexibility for those who earn education awards to use and transfer those awards. This rule also renumbers sections related to national service education awards to combine them all into one CFR part with subpart designations for easier navigation.

DATES: This rule is effective August 14, 2023.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Associate General Counsel, AmeriCorps, 250 E Street SW, Washington, DC 20525, (202) 967–5070, *eappel@cns.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
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I. Background

The National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 *et seq.,* aims to encourage United States citizens to engage in national service and to expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education or job training. Specifically, the Act establishes the National Service Trust and authorizes AmeriCorps to use funds from that Trust to provide education awards to eligible individuals who have fulfilled a term of service in an approved national service position and meet other applicable requirements. AmeriCorps' regulations implementing the Act are within 45 CFR parts 2525 through 2530 and address the National Service Trust (the Trust), who is eligible to receive education awards from the Trust, how the amount of the education awards is determined, the purposes for which the education awards may be used, the circumstances under which AmeriCorps participants will receive forbearance and payment of interest expenses on qualified student loans, and the circumstances in which participants may transfer their educational awards.

II. Overview of Final Rule

Overall, this final rule is intended to improve clarity of the regulations through use of consistent terminology and plain language, improve the transparency of the criteria and procedures for extensions, transfers, and revocations of education awards; and increase flexibility for those who earn education awards to use and transfer those awards. To meet these objectives, this rule makes changes to the following CFR parts:

- Part 2525—National Service Trust: Purpose and Definitions
- Part 2526—Eligibility for an Education Award
- Part 2527—Determining the Amount of an Education Award
- Part 2528—Using an Education Award
- Part 2529—Payment of Accrued Interest
- Part 2530—Transfer of an Education Award

Some changes apply to all these CFR parts, including updating references to the Corporation for National and Community Service to refer to it by its operating name, AmeriCorps, rather than ''the Corporation.'' Specific mentions of AmeriCorps programs, Silver Scholar, and Summer of Service positions were replaced with the term ''national service position,'' where appropriate. Other changes affect only one or some CFR parts. Substantive

changes specific to each CFR part are summarized here.

The rule also renumbers sections, combining these CFR parts into one resulting CFR part, at part 2525, with different subparts. Combining these CFR parts into one allows readers to find regulations on education awards in a single CFR part, which improves navigability and prevents readers from having to switch back and forth between CFR parts for relevant provisions (for example, to refer back to part 2525 for definitions that apply to later CFR parts).

A. Renumbering To Combine Provisions Into One CFR Part

The final rule renumbers the provisions that currently appear in parts 2526 through 2530 to move them into part 2505, so that the regulatory provisions regarding the National Service Trust education awards can be found in one central CFR part. The following table shows where the provisions that fall under the current CFR parts will instead fall under subparts to part 2525.

Current	Final rule
Part 2525—National Service Trust: Purpose and Definitions	Part 2525—National Service Trust. Subpart A—Purpose and Definitions.
Part 2526—Eligibility for an Education Award	Subpart B—Eligibility for an Education Award.
Part 2527—Determining the Amount of an Education Award	Subpart C—Determining the Amount of an Education Award.
Part 2528—Using an Education Award	Subpart D—Using an Education Award.
Part 2529—Payment of Accrued Interest	Subpart E—Payment of Accrued Interest.
Part 2530—Transfer of Education Awards	Subpart F—Transfer of Education Awards.

The following table provides a more detailed comparison of where current regulatory provisions are located, and where those provisions will be located under the final rule. This table also shows where new subpart headings and new sections are being finalized.

Current	Final rule
Part 2525—National Service Trust: Purpose and Definitions	*Part 2525—National Service Trust.* *Subpart A—Purpose and Definitions.*
§ 2525.10 What is the National Service Trust?	§ 2525.1 What is the National Service Trust?
§ 2525.20 Definitions	§ 2525.2 Definitions.
Part 2526—Eligibility for an Education Award	*Subpart B—Eligibility for an Education Award.*
§ 2526.10 Who is eligible to receive an education award from the National Service Trust?	§ 2525.10 When can an Eligible Individual receive an education award from the National Service Trust?
§ 2526.15 Upon what basis may an organization responsible for the supervision of a national service participant certify that the individual successfully completed a term of service?	§ 2525.15 Upon what basis may an entity responsible for the supervision of an Eligible Individual certify that the Eligible Individual successfully completed a term of service?
§ 2526.20 Is an AmeriCorps participant who does not complete an originally approved term of service eligible to receive a pro-rated education award?	§ 2525.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?
§ 2526.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?	§ 2525.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?
§ 2526.30 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use their award?	§ 2525.30 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use their award?
§ 2526.40 What is the time period during which an individual may use an education award?	§ 2525.40 How long is an education award available for use?
	§ 2525.41 When must an application for extension be submitted?
	§ 2525.42 Under what circumstances may AmeriCorps grant an extension?
	§ 2525.43 What if the request for an extension is missing information or documentation?
	§ 2525.44 How will AmeriCorps notify an Eligible Individual or Designated Recipient of its decision on the extension request?
	§ 2525.45 Can an Eligible Individual or Designated Recipient appeal a denied request for an extension to the use period?
§ 2526.50 Is there a limit on the total amount of education awards an individual may receive?	§ 2525.50 Is there a limit on the total amount of education awards an individual may receive?
§ 2526.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in subsequent terms of service?	§ 2525.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in additional terms of service?
§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?	§ 2525.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same term of service?
§ 2526.70 What are the effects of an erroneous certification of successful completion of a term of service?	§ 2525.70 What are the effects of an erroneous certification of successful completion of a term of service?
Part 2527—Determining the Amount of an Education Award	*Subpart C—Determining the Amount of an Education Award.*
§ 2527.10 What is the amount of an education award?	§ 2525.100 What is the amount of an education award?
Part 2528—Using an Education Award	*Subpart D—Using an Education Award.*
§ 2528.10 For what purposes may an education award be used?	§ 2525.210 For what purposes may an education award be used?

Current	Final rule
§ 2528.20 What steps are necessary to use an education award to repay a qualified student loan?	§ 2525.220 What steps are necessary to use an education award to repay a qualified student loan?
§ 2528.30 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?	§ 2525.230 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?
§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?	§ 2525.240 Is there a limit on the amount of an Eligible Individual's education award that AmeriCorps will disburse to an institution of higher education for a given period of enrollment?
§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?	§ 2525.250 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which AmeriCorps has disbursed all or part of that individual's education award?
§ 2528.60 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill approved program?	§ 2525.260 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?
§ 2528.70 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill approved program?	§ 2525.270 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?
§ 2528.80 What happens if an individual for whom the Corporation has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?	§ 2525.280 What happens if an individual for whom AmeriCorps has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?
	§ 2525.290 What happens to an education award upon divorce or death?
Part 2529—Payment of Accrued Interest	*Subpart E—Payment of Accrued Interest.*
§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position or approved Silver Scholar position?	§ 2525.310 Under what circumstances will AmeriCorps pay interest that accrues on qualified student loans during an individual's term of service in an approved position?
§ 2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?	§ 2525.320 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?
§ 2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?	§ 2525.330 What steps are necessary for AmeriCorps to pay interest that has accrued on a qualified student loan in forbearance?
Part 2530—Transfer of Education Awards	*Subpart F—Transfer of Education Awards.*
§ 2530.10 Under what circumstances may an individual transfer an education award?	§ 2525.410 Under what circumstances may an Eligible Individual transfer an education award?
§ 2530.20 For what purposes may a transferred award be used?	§ 2525.420 For what purposes may a transferred award be used?
§ 2530.30 What steps are necessary to transfer an education award?	§ 2525.430 What steps are necessary to transfer an education award?
§ 2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?	§ 2525.440 Is there a limit on the number of recipients an individual may designate to receive a transferred award?
§ 2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?	§ 2525.450 Is there a limit on the amount of transferred education awards a Designated Recipient may receive?
§ 2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?	§ 2525.460 What is the impact of transferring or receiving a transferred education award on an Eligible Individual's eligibility to receive additional education awards?
§ 2530.70 Is a designated individual required to accept a transferred education award?	§ 2525.470 Is a Designated Recipient required to accept a transferred education award?
§ 2530.80 Under what circumstances is a transfer revocable?	§ 2525.480 Under what circumstances is a transfer revocable?
§ 2530.85 What steps are necessary to revoke a transfer?	§ 2525.485 What steps are necessary to revoke a transfer?
	§ 2525.487 What happens to a transferred education award upon divorce or death?
§ 2530.90 Is a designated individual eligible for the payment of accrued interest under Part 2529?	§ 2525.490 Is the recipient of a transferred education award eligible for the payment of accrued interest for their own student loans under subpart E?

B. Part-by-Part (New Subpart-by-Subpart) Summary of Changes

1. Changes to Current Part 2525 (New Subpart A)

Under this rule, part 2525 is newly designated as subpart A of part 2525 and continues to set out the description of the National Service Trust and definitions. Changes ensure that definitions apply throughout the newly compiled CFR part 2525. For example, the changes delete the phrase ''for the purposes of this section'' for definitions of the following terms: ''AmeriCorps education award,'' ''economically disadvantaged youth,'' ''education award,'' ''G.I. Bill-approved program,'' ''Silver Scholar education award,'' and ''Summer of Service education award.''

The changes to part 2525 add definitions for two terms and substantively revise two definitions. The newly added definitions are for the following terms:

- ''Eligible Individual'' as the individual who is eligible for an education award; and
- ''Designated Recipient'' as the person to whom an education award is transferred.

The two definitions being revised are for ''educational expenses'' and ''qualified student loan.'' The changes revise the definition of ''educational expenses'' to:

- Provide that costs of attendance are determined by the Title IV institution of higher education or G.I. Bill approved program;
- Include tuition or associated costs as determined by the program offered by the institution or establishment

approved for offering benefits for which educational assistance may be provided by the Secretary for Veterans Affairs;

- Include expenses incurred participating in a school-to-work program approved by the Secretaries of Labor and Education;
- Delete reference to the following, because they would be included in the category of ''costs of attendance'' as determined by the institution or G.I. Bill approved program:
  - Tuition and fees ''normally assessed'' by an institution;
  - Tuition and fees for students engaged in a course of study by correspondence; and
  - Expenses related to a student's disability; and
- Delete reference to costs associated with student engagement in a work experience under a cooperative education program or course because the costs would be included in the category for expenses incurred in participating in a school-to-work program.

These changes will simplify the definition and do not affect what educational expenses an education award may be used for.

Changes to the definition of ''qualified student loan'' delete the lists of specific federal family education loans, William D. Ford federal direct loans, Federal Perkins loans, and Public Health Service Act loans because they are included in the broad categories set out in the new definition. The changes also replace the category ''any other loan designated as such by Congress'' with the more specific category of loans determined by an institution of higher education or approved veterans' benefits program to be necessary to cover a student's educational expenses and made, insured, or guaranteed by certain listed entities.

The changes also correct the cross-reference to the Higher Education Act of 1965 to cite to the correct section defining ''institution of higher education.''

Other changes to this newly designed subpart A are non-substantive, such as adding the legal name of the education awards to the definition of ''education award,'' eliminating unnecessary verbiage in definitions that first state the term and then repeat the term to provide the meaning.

2. Changes to Current Part 2526 (New Subpart B)

Current part 2526, which is newly designated as subpart B to part 2525, addresses eligibility for an education award.

Changes to current part 2526, which will now be located at subpart B to part 2525, incorporate the newly defined terms for ''Eligible Individual'' and ''Designated Recipient'' for clarity. Edits to § 2525.10 clarify when Eligible Individuals are entitled to receive an education award, and clarify that an Eligible Individual may receive a full education award for a full-time term of service, a partial education award for a less than full-time term of service, or a pro-rated education award if the Eligible Individual was granted a release from completing the term of service for compelling personal circumstances but completed at least 15 percent of the originally approved term of service and performed satisfactorily during that time. The final rule also moves to a separate section (§ 2525.15) the specifics for what the organization responsible for the individual's supervision must certify.

Section 2525.15 combines requirements for AmeriCorps State and National approved national service positions with other approved national service positions for consistency. Section 2525.20 clarifies that there is a requirement, in the cross-referenced § 2522.230(a)(3), for the program to document the basis for any determination that compelling personal circumstances prevent the Eligible Individual from completing their term of service.

Section 2525.30 revises the factors that AmeriCorps considers when determining whether an Eligible Individual may be entitled to use their education award when the Eligible Individual has three or more convictions for possession or sale of a controlled substance. The final rule deletes factors relating to the nature and extent of any other criminal record, the nature and extent of any involvement in trafficking of controlled substances, and the length of time between offenses. AmeriCorps has determined that these factors are unnecessary considerations, given that the type and amount of controlled substance and whether firearms or dangerous weapons were involved in the offense are already considered, and there is already a catch-all factor to allow for consideration of other relevant aggravating or ameliorating circumstances.

Section 2525.40 revises the current section to separate information on extensions to the use period into new sections specific to various questions regarding extensions. Edits to this section also delete the specific reference to Summer of Service education awards.

Section 2525.41 is a new section that specifically addresses when an application for an extension must be submitted and adds an exception to the requirement to submit a request for extension prior to the use period deadline for instances when the individual was unavoidably prevented from timely submitting their application.

Section 2525.42 is a new section that specifically addresses the circumstances in which AmeriCorps will grant an extension. This section clarifies that AmeriCorps will automatically (upon receipt of an application) extend the use period when an individual served and successfully completed another term of service in an approved national service position during the use period. This section then clarifies that AmeriCorps treats all service in AmeriCorps and the Peace Corps as service in another approved national service position for the purposes of extensions, and specifies the documentation required to evidence service in the Peace Corps. Paragraph (b) of this section adds information on AmeriCorps' discretion to grant an extension when an Eligible Individual or Designated Recipient is unavoidably prevented from using the education award during the use period. Paragraph (b) also adds examples of situations that may warrant an extension. Paragraph (b)(2) provides factors that AmeriCorps will consider in determining whether to grant an extension. Paragraph (c) adds examples of circumstances that do not warrant an extension, but removes the current example of an individual who cannot use the education award as a result of the individual's conviction for possession or sale of a controlled substance, to allow AmeriCorps to examine the specific circumstances involved with the conviction under the factors.

Section 2525.43 is a new section that specifies what will happen if a request for extension is missing information or documentation. Section 2525.44 is a new section that specifies how AmeriCorps will notify the Eligible Individual or Designated Recipient of its decision on the extension request. Section 2526.45 is a new section that provides new procedures for an Eligible Individual or Designated Recipient to appeal a denied request for extension.

Section 2525.50 deletes information about the calculation of the value of each individual education award and instead focuses on how the aggregate value of awards is calculated, given that the limit is the aggregate value of two full-time education awards. Section 2525.55 also simplifies the section to convey the impact of the aggregate value of education awards on ability to serve

and to receive additional education awards.

Section 2525.70 adds a new paragraph (b) to state that AmeriCorps will disallow the education award and/or initiate debt collection if AmeriCorps determines the certification made by a national service program is knowingly false or inaccurate.

3. Changes to Current Part 2527 (New Subpart C)

Current part 2527, which will now be subpart C to part 2525, addresses determining the amount of an education award.

Section 2525.100 replaces the text on the education award amounts that may be earned for part-time and reduced part-time service with a table setting out amounts specifically for three quarters time, half-time, reduced half-time, quarter-time, minimal time and summer associate, and abbreviated time terms of service. These specifics better reflect the range of alternatives to full-time service and the accompanying partial education award amounts available. This section also labels as ''pro-rated awards'' those awards available to Eligible Individuals who are released from completing a term of service for compelling personal circumstances. This section also replaces the formula for discounted education award amounts (where discounting is required to ensure an Eligible Individual receives no more than the aggregate value of two awards) with a narrative explanation of how the award amounts are discounted, for clarity.

4. Changes to Current Part 2528 (New Subpart D)

Current part 2528, which will now be subpart D to part 2525, addresses using an education award.

Sections 2525.210 and 2525.240 refer to the updated definition of ''educational expenses'' instead of repeating what the educational expenses include.

Section 2525.250 specifies that the institution does not need to refund AmeriCorps for disbursed, but not used, education award funds if the Eligible Individual was charged for the uncompleted period of study or training. This section also clarifies that the institution must provide a pro-rata refund to AmeriCorps if the institution does not have a published refund policy.

Section 2525.290, a new section, specifies that an education award is not to be treated as marital property and that, unless the listed circumstances are present, that an education award expires upon the Eligible Individual's death.

5. Changes to Current Part 2529 (New Subpart E)

Part 2529, which will now be subpart E to part 2525, addresses payment of accrued interest.

Section 2525.310 adds that the loan holder specifies the period of forbearance during the term of service. Paragraph (b) of this section adds that the portion of accrued interest AmeriCorps will pay is based on the length of service.

6. Changes to Current Part 2530 (New Subpart F)

Part 2530, which will now be subpart F to part 2525, addresses the transfer of education awards.

Section 2530.10 deletes the provision regarding enrollment on or before 2010 because the final rule will apply only after the effective date, which is in 2023. This section also adds the stepchild of an Eligible Individual to the categories of Designated Recipients for transferred awards.

Section 2530.30 breaks out procedures for a Designated Recipient to accept a transferred award into a new paragraph (c). This section also adds a new paragraph (e) to clarify that a Designated Recipient may refuse to accept a transferred education award, and an Eligible Individual may revoke the amount of transfer that has not been requested for use.

Section 2530.40 allows Eligible Individuals to transfer their education award to one or two individuals, rather than just one individual. Paragraph (b) of this section allows Designated Recipients to reject part of the education award designated to be transferred to them. These provisions also clarify that the main restriction on transfer or re-transfer of an education award to an eligible Designated Recipient is that the use period for the education award must not have expired.

Section 2530.50 clarifies that any education awards the Designated Recipient may have earned through their own service term or that were previously been transferred to them are included in the calculation of the aggregate education award value limit. Paragraph (c) allows Eligible Individuals to re-transfer an education award if it is rejected in part by a Designated Recipient, allowing for more flexibility than the current regulation, which prohibits re-transfer of the rejected portion of the award.

This final rule also adds a new paragraph to § 2540.70 to clarify that a Designated Recipient who originally accepted a transferred education award may rescind their acceptance of any unused portion of the award at any time before the education award expires, and for any reason.

Section 2540.80 removes the requirement for AmeriCorps to approve a re-transfer of an education award after an Eligible Individual revokes the award.

Section 2530.85 deletes the paragraph regarding the mechanics of deducting and crediting the revoked amount because these functions are handled internally by AmeriCorps.

Section 2530.87 is a new section that addresses what happens to a transferred education award upon divorce or death.

III. Response to Public Comments

AmeriCorps published the proposed rule on January 6, 2023 (88 FR 1021) and received two public comment submissions before the March 7, 2023, comment deadline. Summaries of the points raised in those comments and AmeriCorps' responses are provided here. No changes to the proposed regulatory text were made in response to these comments or otherwise.

One commenter was supportive of allowing those who earn education awards to spread the benefit to more than one beneficiary. This commenter stated that they have multiple grandchildren and would like to share their education award with as many of them as possible. They also stated they believe allowing sharing with multiple recipients would be an incentive for other older individuals to do more national service.

Response: The final rule carries forward the proposal to increase the number of Designated Recipients to whom an Eligible Individual can transfer their earned award from one to two. The final rule does not increase the number of recipients to whom an education award may be transferred beyond two in order to best prevent fraud, waste, and abuse. Allowing transfers to more than two persons would substantially increase the level of internal controls needed and pose an undue administrative burden on the agency. The agency has determined that these risks can be more efficiently mitigated by limiting the number of transferees to two individuals.

The other commenter stated their general support of the changes but provided the following suggestions and recommendations for additional changes.

The commenter noted that § 2525.55 states that the aggregate value of education awards does not limit an individual's ability to serve additional terms of service and requested that AmeriCorps leverage its waiver

authority to allow commissions to request a waiver to the four-term limit on AmeriCorps members.

Response: The general limitation on four terms of service in an AmeriCorps State and National program is set out in a different regulation than the one being revised by this final rule (*see* 45 CFR 2522.235); however, AmeriCorps will consider this comment as in any future updates to that regulation.

This commenter also suggested that AmeriCorps should provide for an end-of-service ''cash stipend'' in lieu of an education award for individuals that have already earned the maximum aggregate value of education awards. The commenter stated this change would create more equity among AmeriCorps programs and assist AmeriCorps in recruitment and retention efforts:

Response: This comment is beyond the scope of this regulation, but AmeriCorps will take it under advisement.

This commenter requested that § 2525.290 be revised so that, instead of an education award expiring upon an Eligible Individual's death, it could be transferred to an eligible Designated Recipient at that time and allow an extension of time for the Designated Recipient to access the education award if needed, even if the recipient was not age-eligible at the time the Eligible Individual earned the education award.

Response: The proposed and final § 2525.290 reflect the statutory limitation, which provides that the Eligible Individual must transfer the education award prior to death in order for the death not to affect the use of the education award by the Designated Recipient. *See* 42 U.S.C. 12604(f)(5).

This commenter expressed their support of adding stepchild and step-grandchild to the categories of Designated Recipients for transferred awards, allowing transfer to one or two individuals rather than just one, allowing the recipient to reject all of part of the education award, and allowing the re-transfer of the rejected portion of the education award to someone else.

Response: The final rule carries forward these aspects of the proposed rule.

The commenter suggested removing or lowering the age requirement for transferring the education award and encouraged AmeriCorps to work with Congress to remove the limitation that an individual must be age 55 or more the day service begins to be eligible to transfer the award, and instead allow anyone of any age to transfer their education award.

Response: The commenter is correct that the rule cannot remove or lower the age requirement for transferring an education award because the statute provides as a condition for transfer of an education award that the eligible individual is age 55 or older before beginning the term of service involved. *See* 42 U.S.C. 12604(f)(2)(A)(ii).

The commenter recommended not having transferred education awards count as part of an individual's aggregate value of education awards earned.

Response: The current regulation provides that the amount received as a transferred education award is included in the aggregate value of awards received. *See* 45 CFR 2526.50(c)(4). The proposed rule did not propose any change to this requirement; however, AmeriCorps will take this recommendation under advisement for any future rulemaking.

IV. Regulatory Analyses

A. 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, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined this is not a significant regulatory action, and therefore is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review.

B. Congressional Review Act (Small Business Regulatory Enforcement Fairness Act of 1996, Title II, Subtitle E)

As required by the Congressional Review Act (5 U.S.C. 801–808), before an interim or final rule takes effect, AmeriCorps will submit an interim or final rule report to the US House of Representatives, U.S. Senate, and to the Comptroller General of the U.S. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs in the Office of Management and Budget anticipates that this will not be a major rule under 5 U.S.C. 804 because this rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of US-based enterprises to compete with foreign-based enterprises in domestic and export markets.

C. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), AmeriCorps certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, AmeriCorps has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for rules that are expected to have such results.

D. Unfunded Mandates Reform Act of 1995

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

E. Paperwork Reduction Act

This rule requires a revision to one OMB Control Number, Education Award Transfer Forms, currently approved under OMB Control Number 3045–0136, which expires January 31, 2024.

The other information collections in the rule are already authorized by another OMB Control Number. Specifically, the requirements for certifications referred to in §§ 2525.15 and 2525.20 restate requirements in other parts of title 45 (specifically §§ 2522.220 and 2522.230), which are authorized by OMB Control Number 3045–0006, Enrollment and Exit Forms, on which the sponsoring entity provides their certifications, and for which entities maintain supporting documentation as a usual and customary business practice.

This final rule does not affect the information collections associated with parts 2528 and 2529 (other than affecting the CFR citations, which will be updated during routine renewals) that have been approved by OMB:

- For 45 CFR 2528: Voucher and Payment Request Form—approved

under OMB Control Number 3045–0014, which expires March 31, 2026.

• For 45 CFR 2529: Interest Accrual Form—currently approved under OMB Control Number 3045–0053, which expires March 31, 2026. Forbearance Request for National Service Form—approved under OMB Control Number 3045–0030, which expires March 31, 2026.

This final rule affects the Education Award Transfer Forms because the Request to Transfer a Segal Education Award Amount form must be updated to clarify that an award may be transferred to no more than two individuals, that a transfer may be declined in part or in full or revoked in part or in full, and to delete the portion of the form requiring request of a waiver to re-transfer. The Accept/Decline Award Transfer Form requires a change to indicate that step-children and step-grandchildren may accept the transfer of an education award. There is no change to the estimated time or hour or non-hour cost burdens resulting from these form changes. With this rulemaking, AmeriCorps is seeking to revise the following information collection:

OMB Control Number: 3045–0136.

Title: Education Award Transfer Forms.

Brief Description of Collection: This information collection consists of the questions that AmeriCorps members answer to request a transfer of their education award or revoke a transfer, and that education award recipients answer to accept or decline the transfer or rescind their acceptance. The information collected identifies those qualified to transfer their award, the transfer award amount, and those qualified to receive the award transfer, as well as establish a National Service Trust account for the transfer recipient.

Forms Affected: Transfer Application Form, Award Transfer Acceptance Form.

Type of Review: Revision of a currently approved information collection:

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 900.

Total Estimated Number of Annual Responses: 900.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Hour Burden: 75 hours.

Respondents' Obligation: Required to obtain a benefit.

Frequency of Response: Occasional.

Total Estimated Annual Non-Hour Burden Response: $0.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public to comment on any aspect of this information collection, including:

(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) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Written comments and recommendations for the information collection revision should be sent within 30 days of publication of this rulemaking 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 the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Please reference OMB Control Number 3045–0136 in the subject line of your comments.

F. Federalism (Executive Order 13132)

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule 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 rulemaking does not have any federalism implications, as described above.

G. Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

H. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rulemaking: (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.

I. Consultation With Indian Tribes (Executive Order 13175)

AmeriCorps recognizes the inherent sovereignty of Indian tribes and their right to self-governance. The agency has evaluated this rulemaking under the AmeriCorps consultation policy and the criteria in Executive Order 13175 and determined that this rule does not impose substantial direct effects on federally recognized tribes.

List of Subjects in 45 CFR Part 2525

Grant programs—social programs, student aid, volunteers.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service amends chapter XXV of title 45 of the Code of Federal Regulations as follows:

■ 1. Revise part 2525 to read as follows:

PART 2525—NATIONAL SERVICE TRUST

Subpart A—Purpose and Definitions

Sec.
2525.1 What is the National Service Trust?
2525.2 Definitions.

Subpart B—Eligibility for an Education Award

2525.10 When can an Eligible Individual receive an education award from the National Service Trust?
2525.15 Upon what basis may an entity responsible for the supervision of an Eligible Individual certify that the Eligible Individual successfully completed a term of service?
2525.20 Under what circumstances is an Eligible Individual who does not complete an approved term of service eligible to receive a pro-rated education award?
2525.25 If a participant in an approved Summer of Service or Silver Scholar position does not complete their term of service, are they eligible to receive a pro-rated education award?
2525.30 How do convictions for the possession or sale of controlled substances affect an Eligible Individual's ability to use their award?
2525.40 How long is an education award available for use?

2525.41 When must an application for an extension be submitted?
2525.42 Under what circumstances will AmeriCorps grant an extension?
2525.43 What if the request for an extension is missing information or documentation?
2525.44 How will AmeriCorps notify an Eligible Individual or Designated Recipient of its decision on the extension request?
2525.45 Can an Eligible Individual or Designated Recipient appeal a denied request for an extension?
2525.50 Is there a limit on the total amount of education awards an individual may receive?
2525.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in additional terms of service?
2525.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same term of service?
2525.70 What are the effects of an erroneous certification of successful completion of a term of service?

Subpart C—Determining the Amount of an Education Award

2525.100 What is the amount of an education award?

Subpart D—Using an Education Award

2525.210 For what purposes may an education award be used?
2525.220 What steps are necessary to use an education award to repay a qualified student loan?
2525.230 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?
2525.240 Is there a limit on the amount of an Eligible Individual's education award that AmeriCorps will disburse to an institution for a given period of enrollment?
2525.250 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which AmeriCorps has disbursed all or part of that individual's education award?
2525.260 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?
2525.270 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?
2525.280 What happens if an individual for whom AmeriCorps has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill-approved program?
2525.290 What happens to an education award upon divorce or death?

Subpart E—Payment of Accrued Interest

2525.310 Under what circumstances will AmeriCorps pay interest that accrues on qualified student loans during an individual's term of service in an approved position?
2525.320 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?
2525.330 What steps are necessary for AmeriCorps to pay interest that has accrued on a qualified student loan in forbearance?

Subpart F—Transfer of Education Awards

2525.410 Under what circumstances may an Eligible Individual transfer an education award?
2525.420 For what purposes may a transferred award be used?
2525.430 What steps are necessary to transfer an education award?
2525.440 Is there a limit on the number of recipients an individual may designate to receive a transferred award?
2525.450 Is there a limit on the amount of transferred education awards a Designated Recipient may receive?
2525.460 What is the impact of transferring or receiving a transferred education award on an Eligible Individual's eligibility to receive additional education awards?
2525.470 Is a Designated Recipient required to accept a transferred education award?
2525.480 Under what circumstances is a transfer revocable?
2525.485 What steps are necessary to revoke a transfer?
2525.487 What happens to a transferred education award upon divorce or death?
2525.490 Is the recipient of a transferred education award eligible for the payment of accrued interest for their own student loans?

Authority: 42 U.S.C. 12601–12606

Subpart A—Purpose and Definitions

§ 2525.1 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which AmeriCorps makes payments of education awards, pays interest that accrues on qualified student loans for AmeriCorps participants during terms of service in approved national service positions, and makes other payments authorized by Congress.

§ 2525.2 Definitions.

In addition to the definitions in § 2510.20 of this chapter, the following definitions apply to terms used this part:

AmeriCorps means the Corporation for National and Community Service.

Cost of attendance has the same meaning as in Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et. seq.).

Current educational expenses means the cost of attendance, or other costs attributable to an educational course offered by an institution of higher education that has in effect a program participation agreement under Title IV of the Higher Education Act, for a period of enrollment that begins after an individual enrolls in an approved national service position.

Designated Recipient means the person to whom an earned education award is transferred.

Economically disadvantaged youth means a child who is eligible for a free lunch or breakfast under the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).

Education award means the Segal AmeriCorps Education Award of financial assistance available under this part, including the Silver Scholar education awards, and Summer of Service education awards.

Educational expenses means—

(1) Cost of attendance as determined by the Title IV institution of higher education or G.I. Bill-approved program as provided in 20 U.S.C. 1087*ll;* or

(2) Tuition or associated costs as determined by a program offered by an educational institution or training establishment approved for educational benefits under 38 U.S.C. 3670 *et seq.* for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary for Veterans Affairs; and

(3) Expenses incurred participating in a school-to-work program approved by the Secretaries of Labor and Education.

Eligible Individual means an individual who has enrolled in and successfully completed a term of service in an approved national service position, as certified under § 2525.15.

G.I. Bill-approved program is an educational institution or training establishment approved for educational benefits under the Montgomery G.I. Bill (38 U.S.C. 3670 *et seq.*) for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary for Veterans Affairs.

Holder means—

(1) The original lender; or

(2) Any other entity to which a loan is subsequently sold, transferred, or assigned if such entity acquires a legally enforceable right to receive payments from the borrower.

Institution of higher education has the same meaning given the term in section 102 of the Higher Education Act of 1965, as amended (20 U.S.C. 1002).

Period of enrollment means the period that the institution has established for which institutional charges are generally assessed (*e.g.,* length of the

student's course, program, or academic year.)

Qualified student loan means:

(1) Any loan made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), other than a loan to a parent of a student under section 428B of that Act (20 U.S.C. 1078–2);

(2) Any loan made under Title VII or VIII of the Public Service Health Act (42 U.S.C. 292a *et seq.*); or

(3) Any other loan determined by an institution of higher education or an approved veterans' benefits program to be necessary to cover a student's educational expenses and made, insured, or guaranteed by:

(i) An eligible lender, as defined in section 435 of the Higher Education Act of 1965 (20 U.S.C. 1085);

(ii) The direct student loan program under part D of Title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a *et seq.*);

(iii) A State agency; or

(iv) A lender otherwise determined by AmeriCorps to be eligible to receive disbursements from the National Service Trust.

Silver Scholar education award means the financial assistance available under this part for which an individual in an approved Silver Scholar position may be eligible.

Summer of Service education award means the financial assistance available under this part for which an individual in an approved Summer of Service position may be eligible.

Term of service means—

(1) For an individual serving in an approved AmeriCorps position, one of the terms of service specified in § 2522.220 of this chapter

(2) For an individual serving in an approved Silver Scholar position, not less than 350 hours during a one-year period

(3) For an individual serving in an approved Summer of Service position, not less than 100 hours during the summer months of a single year.

Subpart B—Eligibility for an Education Award

§ 2525.10 When can an Eligible Individual receive an education award from the National Service Trust?

(a) *General.* An Eligible Individual is entitled to receive an education award from the National Service Trust if that person:

(1) Is a citizen or national of the United States or a lawful permanent resident alien of the United States; and,

(2) Met the applicable eligibility requirements for the approved national service program as appropriate; and,

(3) Either:

(i) Is certified by their supervising entity to have successfully completed a term of service—whether a full-time 1,700-hour term corresponding to a full education award or a less than full-time term of service with a corresponding partial award amount described in § 2525.100(b)—as certified under § 2525.15; or

(ii) For a pro-rated education award amount described in § 2525.100(c), is certified by their supervising entity to have completed at least 15 percent of the originally-approved term of service and performed satisfactorily prior to being granted a release for compelling personal circumstances, consistent with § 2522.230(a) of this chapter.

(b) *Prohibition on duplicate benefits.* An Eligible Individual who receives a post-service benefit in lieu of an education award may not receive an education award for the same term of service.

(c) *Penalties for false information.* Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

§ 2525.15 Upon what basis may an entity responsible for the supervision of an Eligible Individual certify that the Eligible Individual successfully completed a term of service?

(a) An Eligible Individual's supervising entity must certify that the individual has successfully completed a term of service. The individual successfully completed a term of service if the individual has:

(1) Completed the number of service hours required;

(2) Satisfactorily performed on assignments, tasks, or projects;

(3) Met any performance criteria as determined by the program and communicated to the member; and

(4) Fulfilled any other enrollment and program requirements to earn an education award.

(b) A certification by the supervising entity that an individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation.

§ 2525.20 Under what circumstances is an Eligible Individual who does not complete an approved term of service eligible to receive a pro-rated education award?

(a) *Release for compelling personal circumstances.* An Eligible Individual who is released before they complete an approved term of service is eligible for a pro-rated education award if their supervising entity:

(1) Released the Eligible Individual for compelling personal circumstances in accordance with the requirements of § 2522.230(a) of this chapter, including requirements for maintaining documentation of the basis for the entity's decision;

(2) Certifies that the Eligible Individual:

(i) Performed satisfactorily before they were granted a release for compelling personal circumstances; and

(ii) Completed at least 15 percent of the originally approved term of service.

(b) *Release for cause.* An individual who is released for cause before they completed an originally approved term of service is not eligible for any portion of an education award.

§ 2525.25 If a participant in an approved Summer of Service or Silver Scholar position does not complete their term of service, are they eligible to receive a pro-rated education award?

No. An individual released for any reason before they complete an approved term of service in a Silver Scholar or Summer of Service position is not eligible to receive a pro-rated award.

§ 2525.30 How do convictions for the possession or sale of controlled substances affect an Eligible Individual's ability to use their award?

(a) Except as provided in paragraph (b) of this section, an Eligible Individual who is convicted under Federal or State law of the possession or sale of a controlled substance is not eligible to use his or her education award from the date of the conviction until the end of a specified time period, which is determined based on the type of conviction as follows:

(1) For conviction of the possession of a controlled substance, the individual is ineligible from the date of conviction for—

(i) One year for a first conviction;

(ii) Two years for a second conviction; and

(iii) For a third or subsequent conviction, indefinitely, as determined by AmeriCorps according to the following factors:

(A) Type and amount of controlled substance;

(B) Whether firearms or other dangerous weapons were involved in the offense;

(C) Employment history;

(D) Service to the community;

(E) Recommendations from community members and local officials, including experts in substance abuse and treatment; and

(F) Any other relevant aggravating or ameliorating circumstances.

(2) For conviction of the sale of a controlled substance, the individual is ineligible from the date of conviction for—

(i) Two years for a first conviction; and

(ii) Two years plus any additional time AmeriCorps determines is appropriate for second and subsequent convictions, based on the factors set forth in paragraphs (a)(1)(iii)(A) through (F) of this section.

(b) AmeriCorps will restore the Eligible Individual's access to use the education award if AmeriCorps determines that the individual has successfully completed a legitimate drug rehabilitation program, or in the case of a first conviction that the individual has enrolled in a legitimate drug rehabilitation program and:

(1) The drug rehabilitation program is recognized as legitimate by appropriate Federal, State, or local authorities; and

(2) The Eligible Individual's enrollment in or successful completion of the legitimate drug rehabilitation program has been certified by an appropriate official of that program.

§ 2525.40 How long is an education award available for use?

Unless AmeriCorps approves an extension under § 2525.42, the use period for an education award is as follows:

(a) An education award is available for an Eligible Individual to use until seven years from the date when they successfully completed the term of service for which the award was earned;

(b) An education award that is transferred to a Designated Recipient under subpart F of this part may be used until 10 years from the date when the Eligible Individual who transferred the award successfully completed their term of national service.

§ 2525.41 When must an application for an extension be submitted?

An application for an extension must be submitted to AmeriCorps before the award use period ends, or the individual must have been unavoidably prevented from timely submitting the extension application.

§ 2525.42 Under what circumstances will AmeriCorps grant an extension?

(a) AmeriCorps will automatically grant an extension to the use period of an education award if the individual served and successfully completed a term of service in an approved national service position that fell within the use period for that education award and applies for an extension under § 2525.41.

(1) The use period will be extended by the length of the individual's additional approved and completed term of service at the time of the extension application.

(2) For purposes of this extension, AmeriCorps will treat all service in AmeriCorps and the Peace Corps as service in another AmeriCorps-approved national service position.

(3) If the additional of service is in the Peace Corps, the individual requesting an extension will need to provide a Description of Service, signed by the country's director or designee for the Peace Corps service.

(b) If AmeriCorps determines that an Eligible Individual or Designated Recipient was unavoidably prevented from using the education award during the original use period, AmeriCorps may grant an extension for a period of time that AmeriCorps deems appropriate, but generally not for more than one year from the end of the original use period. Also, AmeriCorps will grant only one extension of the use period except in very limited circumstances, such as, for example, when the event preventing the member from timely using their education award is likely to exist for more than 12 months, such as active military duty.

(1) Examples of situations that may warrant an extension if they hinder use of an education award may include, but are not limited to:

(i) The Eligible Individual's serious illness, injury, or disability;

(ii) The death, serious illness, injury, or disability of someone in the Eligible Individual's immediate family that occurs close to the end of the use period;

(iii) The destruction or inaccessibility of important service records maintained by the program;

(iv) Natural disasters;

(v) Military service that prevents the use of an education award, such as active duty overseas (but a person in the reserves or National Guard who has not been called up on active duty, or who is enlisted in the military, is not necessarily unavoidably prevented from timely using their education award because of their military service).

(2) When considering whether to grant an extension, AmeriCorps also will consider whether:

(i) The extension is a result of the individual's choices or actions or factors beyond the individual's control;

(ii) The need for the extension is in any part attributable to AmeriCorps' or an AmeriCorps-funded entity's actions;

(iii) The lending institution or institution entitled to the payment failed to take an action, or took an action, that resulted in the individual needing/wanting the extension.

(c) Examples of circumstances that do not meet the criteria for granting an extension may include but are not limited to:

(1) Employment or unemployment, even in a position with a non-profit organization involved in community service.

(2) Forgetting to use the education award, being unaware of the use-period restrictions, or not receiving his or her education award expiration notice.

(3) Being too young to use a transferred education award.

§ 2525.43 What if the request for an extension is missing information or documentation?

If the extension application lacks necessary information or documentation, AmeriCorps may request additional documentation. If the requested additional documentation is not provided to AmeriCorps within 30 days, AmeriCorps may close the request for an extension.

§ 2525.44 How will AmeriCorps notify the Eligible Individual or Designated Recipient of its decision on the extension request?

AmeriCorps will notify the Eligible Individual or Designated Recipient in writing if the request for an extension has been granted or denied. The notification will advise the requester of the process for appealing the denial if the requester has a good-faith basis to believe their request was erroneously denied.

§ 2525.45 Can an Eligible Individual or Designated Recipient appeal a denied request for an extension?

(a) If an Eligible Individual or Designated Recipient submits a timely application for an extension and the application is denied, the individual may file an appeal. The appeal must:

(1) Be received within 30 days of the denial determination;

(2) Be made in writing—either online through the *My AmeriCorps* portal if the education award has not expired—or through a submission to the National Service Hotline at 1–800–942–2677;

(3) Explain why the initial determination was erroneous/should be reviewed; and,

(4) Include supporting documentation, if applicable.

(b) AmeriCorps may grant an appeal when, after review of all the information provided originally and on appeal, it appears that the extension should have been granted. AmeriCorps may ask for

additional documentation to inform the appeal determination.

(c) Individuals who submit appeals will be notified in writing of the final determination.

§ 2525.50 Is there a limit on the total amount of education awards an individual may receive?

(a) *General limitation.* While there is no limit on the specific dollar amount, no individual may receive more than the amount equal to the aggregate value of two full-time education awards.

(b) *Calculation of aggregate value of awards received.* The aggregate value of education awards received is the sum of:

(1) The value of each education award received for successful completion of an approved national service position;

(2) The value of each partial education award received upon release from an approved national service position for compelling personal circumstances; and

(3) The value of any amount received from a transferred education award, except as provided in § 2525.460.

(c) *Determination of receipt of award.* For purposes of determining the aggregate value of education awards, an award is considered to be received at the time it becomes available for use.

§ 2525.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in additional terms of service?

The aggregate value of education awards received does not limit an individual's ability to serve in additional terms of service, but does impact the amount of the education award the individual may receive pursuant to § 2525.100(d) upon successful completion of any additional term of service.

§ 2525.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same term of service?

An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans, except an individual may credit the service toward the Public Service Loan Forgiveness Program, as provided under 34 CFR 685.219.

§ 2525.70 What are the effects of an erroneous certification of successful completion of a term of service?

(a) If AmeriCorps determines that the certification made by a national service program under § 2525.10(a)(2) is erroneous, AmeriCorps shall assess against the national service program a charge for the amount of any associated payment or potential payment from the National Service Trust, taking into consideration the full facts and circumstances that led to the erroneous or incorrect certification.

(b) If AmeriCorps determines that the certification made is knowingly false or inaccurate, AmeriCorps will disallow the education award and/or initiate a debt collection process for any education award funds disbursed.

(c) Nothing in this section prohibits AmeriCorps from taking any action authorized by law based upon any certification that is knowingly made in a false, materially misleading, or fraudulent manner.

Subpart C—Determining the Amount of an Education Award

§ 2525.100 What is the amount of an education award?

(a) *Full-time term of service.* Except as provided in paragraph (d) of this section, the education award for a full-time term of service in an approved national service position of at least 1,700 hours will be equal to the maximum amount of a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for that grant may receive in the aggregate for the award year in which the term of service is approved by AmeriCorps.

(b) *Less than full-time term of service.* Except as provided in paragraph (d) of this section, the amount of an education award for an approved national service position for less than full-time term of service (*i.e.,* partial award) is determined in accordance with the following table:

TABLE 1 TO PARAGRAPH (b)

For:	In an approved position of at least: (hours)	Is equal to the following percentage of the amount of an education award for a full-time term of service described in paragraph (a) of this section:
Three quarters time term of service (TQT)	1,200	70 percent.
Half-time term of service (HT)	900	50 percent.
Reduced half-time term of service (RHT)	675	Approximately 39 percent.
Quarter-time term of service (QT)	450	Approximately 26 percent.
Minimal time and summer associate (MT & SA)	300	Approximately 21 percent.
Abbreviated time (AT)	100	5.6 percent.

(c) *Calculating a pro-rated award following release for compelling personal circumstances.* The education award for an Eligible Individual who is released from completing an approved term of service for compelling personal circumstances is equal to the product of:

(1) The number of hours completed divided by the number of hours in the approved term of service; and

(2) The amount of the education award for the approved term of service.

(d) *Calculating a discounted education award amount.* To ensure that an Eligible Individual receives no more than the aggregate value of two awards, pursuant to § 2525.50, if the sum of the education award value offered for a term of service and the aggregate value of previously-received education awards exceeds the value of two awards, then the individual may receive only a portion of that offered education award, such that the aggregate value of the education awards is not greater than the value of two awards.

Subpart D—Using an Education Award

§ 2525.210 For what purposes may an education award be used?

(a) An education award may be used to pay educational expenses and/or to repay qualified student loans, as defined in § 2525.2;

(b) An education award is divisible and may be applied to any combination of loans, costs, or expenses described in paragraph (a) of this section.

§ 2525.220 What steps are necessary to use an education award to repay a qualified student loan?

(a) *Required information.* Before disbursing an amount from an education award to repay a qualified student loan, AmeriCorps must receive:

(1) An Eligible Individual's written authorization and request for a specific payment amount; and

(2) Any identifying and other information from the loan holder as requested by AmeriCorps.

(b) *Payment.* When AmeriCorps receives the information required under paragraph (a) of this section, it will pay the loan holder and notify the Eligible Individual of the payment.

(c) *Aggregate payments.* AmeriCorps may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2525.230 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?

(a) *Required information.* Before disbursing funds from an education award to pay all or part of the current educational expenses at an institution of higher education, AmeriCorps must receive:

(1) An Eligible Individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by AmeriCorps, including verification that—

(i) It has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) Its eligibility to participate in any of the programs under Title IV of the Higher Education Act of 1965 has not been limited, suspended, or terminated;

(iii) If an Eligible Individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution of higher education will ensure an appropriate refund to AmeriCorps of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to AmeriCorps of the unused portion of the education award;

(iv) Individuals using education awards to pay for current educational expenses at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The requested amount will be used to pay all or part of the Eligible Individual's educational expenses attributable to a course offered by the institution;

(vi) The requested amount does not exceed the difference between:

(A) The Eligible Individual's cost of attendance and other educational expenses; and

(B) The Eligible Individual's estimated student financial assistance for that period under Part A of Title IV of the Higher Education Act (20 U.S.C. 1070 *et seq.*).

(b) *Payment.* When AmeriCorps receives the information required under paragraph (a) of this section, it will pay the institution and notify the Eligible Individual of the payment.

(c) *Installment payments.* AmeriCorps will disburse the education award payment to the institution in at least two separate installments, none of which exceeds 50 percent of the total amount. The interval between installments may not be less than one-half of the period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or other division of a period of enrollment.

§ 2525.240 Is there a limit on the amount of an Eligible Individual's education award that AmeriCorps will disburse to an institution for a given period of enrollment?

Yes. AmeriCorps' disbursement from an Eligible Individual's education award for any period of enrollment may not exceed the difference between:

(a) The Eligible Individual's educational expenses, determined by the institution; and

(b) The Eligible Individual's estimated financial assistance for that period under part A of Title IV of the Higher Education Act.

§ 2525.250 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which AmeriCorps has disbursed all or part of that individual's education award?

(a) If an Eligible Individual for whom AmeriCorps has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, then an institution that receives a disbursement of education award funds from AmeriCorps must:

(1) Provide a refund to AmeriCorps in an amount determined under that institution's published refund requirements, unless the institution charged the Eligible Individual for the uncompleted period of study or training.

(2) Provide a pro-rata refund to AmeriCorps of the unused portion of the education award if the institution does not have a published refund policy.

(b) AmeriCorps will credit any refund received for an Eligible Individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

§ 2525.260 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?

To use the education award to pay expenses incurred in enrolling in a G.I. Bill-approved program, an Eligible Individual must have received an education award for successfully completing a term in an approved national service position, in which they enrolled on or after October 1, 2009.

§ 2525.270 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?

(a) *Required information.* Before disbursing funds from an education award for this purpose, AmeriCorps must receive:

(1) An individual's written authorization and request for a specific payment amount;

(2) Verification from the individual that they meet the criteria in § 2525.260; and

(3) Information from the educational institution or training establishment as requested by AmeriCorps, including verification that—

(i) The amount requested will be used to pay all or part of the individual's expenses attributable to a course, program of education, apprenticeship, or job training offered by the institution or establishment;

(ii) The course(s) or program(s) for which the individual is requesting to use the education award has been and is currently approved by the State approving agency for the State where the institution or establishment is located, or by the Secretary of Veterans Affairs; and

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution or establishment will ensure a pro-rata refund to AmeriCorps of the unused portion of the education award.

(b) *Payment.* When AmeriCorps receives the information required under paragraph (a) of this section, it will pay the institution or establishment and notify the individual of the payment.

§ 2525.280 What happens if an individual for whom AmeriCorps has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?

(a) If an individual for whom AmeriCorps has disbursed education award funds withdraws or otherwise

fails to complete a period of enrollment, the approved educational institution or training establishment that received a disbursement of education award funds from AmeriCorps must provide a pro-rata refund to AmeriCorps of the unused portion of the education award.

(b) AmeriCorps will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

§ 2525.290 What happens to an education award upon divorce or death?

(a) *Prohibition on treatment of an education award as marital property.* An education award may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(b) *Death of Eligible Individual.* An educational award expires and is no longer available for any purpose upon the death of the Eligible Individual, except for:

(1) Any award or portion of the educational award the Eligible Individual transferred prior to death;

(2) Any amount for which the Eligible Individual submitted a request for disbursement prior to death that the National Service Trust had not yet either received or acted upon as of the date of death.

Subpart E—Payment of Accrued Interest

§ 2525.310 Under what circumstances will AmeriCorps pay interest that accrues on qualified student loans during an individual's term of service in an approved position?

(a) *Eligibility.* AmeriCorps will pay interest that accrues on an Eligible Individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if:

(1) The Eligible Individual successfully completes a term of national service in an approved position; and

(2) The loan holder approves the Eligible Individual's request for forbearance for a time period specified by the loan holder during the term of service.

(b) *Amount.* The portion of accrued interest that AmeriCorps will pay is determined by the length of service. The percentage of accrued interest that AmeriCorps will pay is the lesser of—

(1) The product of—

(i) The number of completed service hours divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and

(2) One hundred (100).

(c) *Supplemental to education award.* A payment of accrued interest under this part is supplemental to an education award received by an Eligible Individual under this part.

(d) *Limitation.* AmeriCorps is not responsible for the payment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service.* AmeriCorps will not pay interest expenses that accrue on an Eligible Individual's qualified student loan during a period of suspended service.

§ 2525.320 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) An Eligible Individual seeking forbearance must submit a request to the loan holder.

(b) If, before approving a request for forbearance, the loan holder requires verification that the Eligible Individual is serving in an approved national service position, AmeriCorps will provide verification upon a request from the Eligible Individual or the loan holder.

§ 2525.330 What steps are necessary for AmeriCorps to pay interest that has accrued on a qualified student loan in forbearance?

(a) If an Eligible Individual has obtained forbearance on a qualified student loan, AmeriCorps will make payments from the National Service Trust for interest that has accrued on that student loan during the individual's term of service, after:

(1) The program verifies that the Eligible Individual has successfully completed the term of service and the dates when the term of service began and ended;

(2) The holder of the loan verifies the amount of interest that has accrued during the term of service.

(b) When AmeriCorps receives all necessary information from the program and the loan holder, it will pay the loan holder and notify the individual of the payment.

Subpart F—Transfer of Education Awards

§ 2525.410 Under what circumstances may an Eligible Individual transfer an education award?

An Eligible Individual may transfer an education award if—

(a) The Eligible Individual was 55 or older on the day they began the term of service in an approved national service position;

(b) The Eligible Individual successfully completed a term of service in an approved national service position;

(c) The education award the Eligible Individual is requesting to transfer has not expired, consistent with the period of availability set forth in § 2525.40(a);

(d) The individual designated to receive the transferred education award (the Designated Recipient) is:

(1) The Eligible Individual's child, grandchild, stepchild, step-grandchild, or foster child; and

(2) A citizen, national, or lawful permanent resident of the United States.

(e) The Designated Recipient is not entitled to the education award until their citizenship status has been verified. Once citizenship is confirmed, the Designated Recipient has all the benefits of an Eligible Individual.

§ 2525.420 For what purposes may a transferred award be used?

A transferred award may be used by the Designated Recipient to repay qualified student loans or to pay current educational expenses at an institution of higher education, as described in § 2525.210.

§ 2525.430 What steps are necessary to transfer an education award?

(a) *Request for transfer.* Before transferring an education award to a Designated Recipient, AmeriCorps must receive a request from the transferring Eligible Individual, including:

(1) The Eligible Individual's written authorization to transfer the education award, the year in which the education award was earned, and the specific amount of the education award to be transferred;

(2) Identifying information for the Designated Recipient who is to receive the transferred education award;

(3) A certification that the transferring Eligible Individual and the Designated Recipient have completed or satisfy the requirements of § 2525.410.

(b) *Notification to Designated Recipient.* Upon receipt of a request, including all required information listed in paragraph (a) of this section, AmeriCorps will contact the Designated Recipient to:

(1) Notify the Designated Recipient, or their legal guardian, of the proposed transfer;

(2) Confirm the Designated Recipient's identity;

(3) Confirm that the Designated Recipient is a citizen, national, or lawful permanent resident of the United States; and

(4) Give the Designated Recipient the opportunity to accept or reject the proposed transferred education award.

(c) *Acceptance by Designated Recipient.* To accept an education award, a Designated Recipient, or their legal guardian, must certify that the Designated Recipient is eligible under § 2525.410. Upon receipt of the Designated Recipient's acceptance and verification of the Designated Recipient's eligibility, AmeriCorps will create an account in the National Service Trust for the Designated Recipient, if an account does not already exist, and the accepted amount will be deducted from the transferring Eligible Individual's account and credited to the Designated Recipient's account.

(d) *Timing of transfer.* AmeriCorps must receive the request from the transferring Eligible Individual before the date the education award expires.

(e) *Refusal.* The Designated Recipient can refuse to accept the transferred education award under § 2525.470.

(f) *Revocation.* The Eligible Individual can revoke part or all of the remaining balance of the transfer that has not yet been requested for use under §§ 2525.480 and 2525.485.

§ 2525.440 Is there a limit on the number of recipients an individual may designate to receive a transferred award?

(a) An Eligible Individual may transfer all or part of a non-expired education award to no more than two recipients.

(b) If a Designated Recipient rejects, in whole or in part, a transferred education award, or a transfer was revoked in accordance with § 2525.480, the education award can be transferred to another Designated Recipient, so long as the education award has not yet expired.

§ 2525.450 Is there a limit on the amount of transferred education awards a Designated Recipient may receive?

(a) If the sum of the value of the requested transfer plus the aggregate value of education awards a Designated Recipient has previously earned or received, through the Designated Recipient's own service term or having previously been transferred an education award, would exceed the aggregate value of two full-time education awards, as determined pursuant to § 2525.50(b), the Designated Recipient will be deemed to have rejected that portion of the education award that would result in the excess.

(b) If a Designated Recipient has already received the aggregate value of two full-time education awards, they may not receive a transferred education award, and the Designated Recipient will be deemed to have rejected the education award in full.

§ 2525.460 What is the impact of transferring or receiving a transferred education award on an Eligible Individual's eligibility to receive additional education awards?

(a) *Impact on transferring individual.* Pursuant to § 2525.50, an education award is considered to be received at the time it becomes available for a Designated Recipient's use. Transferring all or part of an award does not reduce the aggregate value of education awards the transferring individual is considered to have received.

(b) *Impact on Designated Recipient.* For the purposes of determining the value of the transferred education award under § 2525.50, a Designated Recipient will be considered to have received a value equal to the amount received divided by the amount of a full-time education award in the year the transferring Eligible Individual's position for that education award was approved.

(c) *Result of revocation on education award value.* If the Eligible Individual revokes the transferred education award, in whole or in part, the value of the education award considered to have been received by the Designated Recipient for purposes of § 2525.50 will be reduced accordingly.

§ 2525.470 Is a Designated Recipient required to accept a transferred education award?

(a) *General rule.* No. A Designated Recipient is not required to accept a transferred education award and may reject an education award in whole or in part.

(b) *Result of rejection in full.* If the Designated Recipient rejects a transferred education award in whole, the amount is credited back to the transferring Eligible Individual's account in the National Service Trust, and may be transferred to another individual, or may be used by the transferring Eligible Individual, consistent with the original period of availability set forth in § 2525.40(a).

(c) *Result of rejection in part.* If the Designated Recipient rejects a transferred education award in part, the rejected portion is credited to the transferring Eligible Individual's account in the National Service Trust for their use, including re-transfer of the education award, consistent with the original period of availability set forth in § 2525.40(a).

(d) *Rescission.* A Designated Recipient who originally accepted a transferred education award may rescind their acceptance of any unused portion of the award at any time before the education award expires, and for any reason.

§ 2525.480 Under what circumstances is a transfer revocable?

(a) *Revocation.* An Eligible Individual who transferred an award may revoke the transfer at any time and for any reason before the education award's expiration and use by the Designated Recipient.

(b) *Use of award.* Upon revocation, the revoked amount will be deducted from the Designated Recipient's account and credited to the transferring Eligible Individual's account. The transferring Eligible Individual may use the revoked transferred education award for any of the purposes described in § 2525.210, consistent with the original time period of availability set forth in § 2525.40(a).

(c) *Re-transfer.* An Eligible Individual may re-transfer an education award to another qualifying individual after revoking the education award.

§ 2525.485 What steps are necessary to revoke a transfer?

(a) *Request for revocation.* Before revoking a transfer, the transferring Eligible Individual must submit a request to AmeriCorps that includes:

(1) The Eligible Individual's written authorization to revoke the education award;

(2) The year in which the education award was earned;

(3) The specific amount to be revoked; and

(4) The identity of the Designated Recipient.

(b) *Used education awards.* A revocation may only apply to the portion of the transferred education award that has not been used by the Designated Recipient. If the Designated Recipient has used the entire transferred amount before AmeriCorps receives the revocation request, no amount will be returned to the transferring Eligible Individual. An amount is considered to be used when it is disbursed from the National Service Trust, not when a request is received for its use.

(c) *Notification to Designated Recipient.* AmeriCorps will notify the Designated Recipient of the amount being revoked as of the date of its receipt of the revocation request.

(d) *Timing of revocation.* AmeriCorps must receive the request to revoke the transfer from the transferring Eligible Individual before the education award's expiration as calculated pursuant to § 2525.40(a)(2), from the date the education award was originally earned.

§ 2525.487 What happens to a transferred education award upon divorce or death?

(a) *Prohibition on treatment of a transferred education award as marital property.* An education award

transferred under this subsection may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(b) *Death of transferor.* The death of an Eligible Individual who has transferred, or initiated the transfer of, an education award under this subsection does not affect the use of the education award by the Designated Recipient.

§ 2525.490 Is a recipient of a transferred education award eligible for the payment of accrued interest for their own student loans?

No. The transfer of an education award does not convey eligibility for payment of accrued interest under subpart E of this part.

PART 2526—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 2526.

PART 2527—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 2527.

PART 2528—[REMOVED AND RESERVED]

■ 4. Remove and reserve part 2528.

PART 2529—[REMOVED AND RESERVED]

■ 5. Remove and reserve part 2529.

PART 2530—[REMOVED AND RESERVED]

■ 6. Remove and reserve part 2530.

Fernando Laguarda,

General Counsel.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 80

[MD Docket No. 23–156; FCC 23–39; FR ID 145447]

Closure of FCC Lockbox 979097 Used To File Fees for Services Provided by the Wireless Telecommunications Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts an Order that closes Lockbox 979097 and modifies the relevant rule provisions to require electronic filing and fee payments.

DATES: Effective August 14, 2023.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Office of Managing Director at (202) 418–2653 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 23–39, MD Docket No. 23–156, adopted on May 17, 2023 and released on May 18, 2023, which is the subject of this rulemaking. The full text of this document is available for public inspection and copying by downloading the text from the Commission's website at *https://www.fcc.gov/document/closure-lockbox-used-collect-fee-payments-wtb.*

I. Procedural Matters

A. Final Regulatory Flexibility Analysis

1. Section 603 of the Regulatory Flexibility Act, as amended, requires a regulatory flexibility analysis in notice and comment rulemaking proceedings. See 5 U.S.C. 603(a). As we are adopting these rules without notice and comment, no regulatory flexibility analysis is required.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

3. The Commission will not send a copy of the Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not ''substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

II. Introduction

4. In the Order, we reduce expenditures by the Federal Communications Commission (FCC or Commission) and modernize Commission procedures by amending § 1.1102 of our rules, 47 CFR 1.1102, which sets forth the fees for applications and other filings processed by the FCC's Wireless Telecommunications Bureau (WTB). The rule amendment reflects the closure of the P.O. Box 979097 (*i.e.,* lockbox) [1] used for manual payment of filing fees for three different broad categories of filings: (1) Site-based license applications; (2) Personal license applications; and (3) Geographic-based license applications. We discontinue the option of manual fee payments and instead require the use of an electronic payment for each listing in this rule, and make conforming changes to other related provisions.

5. Section 1.1102 of the Commission's rules, 47 CFR 1.1102, provides a schedule of fees for applications and other filings processed by WTB. The rule also directs filers that do not utilize the Commission's on-line filing and fee payment systems to send manual filings and/or payments to the Commission at P.O. Box 979097 at U.S. Bank in St. Louis, Missouri. In recent years, there have been a decreasing number of lockbox payments, and, although paper filings are contemplated by the rule, WTB now requires electronic filing of all wireless radio service applications and pleadings. As a result, transition to all electronic payments is consistent with Commission-wide efforts to digitize our systems and create efficient and more accessible interactions with the agency.

6. The Commission has reduced its reliance on P.O. Boxes for the collection of fees, instead encouraging the use of electronic payment systems for all application and regulatory fees and closing certain lockboxes. We find that electronic payment of fees for the services processed by WTB reduces the agency's expenditures (including eliminating the annual fee for the bank's services) and the cost of manually processing each transaction, with little or no inconvenience to the Commission's regulatees, applicants, and the public. As part of this effort, we are now closing P.O. Box 979097 and modifying the relevant rule provisions that permit manual filings and require payment of fees via the closed P.O. Box. Specifically, §§ 0.482, 1.1102, and 1.2107 are being modified to eliminate references to the lockbox at U.S. Bank. In addition, § 1.907 is being modified to eliminate references to applications submitted on paper, and the caption to § 1.913 is being adjusted to eliminate a reference to manual filing. In addition, we make minor modifications to our

[1] Our rules and other Commission documents refer to a series of P.O. Boxes used for the collection of fees as ''lockboxes.'' These P.O. Boxes are located at U.S. Bank in St. Louis, Missouri. Once a payment is received, it is processed and recorded by the bank.

rules to reflect the replacement of the Commission's prior payment interface, Fee Filer, with a module contained within the Commission's Registration System (CORES). These rule changes are contained in the Appendix of the Order and the Final Rules of this document. We make these changes without notice and comment because they are rules of agency organization, procedure, or practice exempt from the general notice-and-comment requirements of the Administrative Procedure Act, see 5 U.S.C. 553(b)(A).

7. *Implementation of Lockbox Closure.* As a temporary transition measure, for 90 days after publication of this order in the **Federal Register**, U.S. Bank will continue to process payments to P.O. Box 979097. After that date, payments for these WTB services must be made in accordance with the procedures set forth on the Commission's website, *https://www.fcc.gov/wireless-fees.* For now, such payments will be made upon log-in at *https://apps.fcc.gov/cores/userLogin.do.* Users will then access the link Manage Existing FRNs, and subsequently FRN Financials. Batch filers will use ULS Pay fees to make electronic payments. In the event an applicant is unable to make an electronic payment, the Commission's existing waiver standard in 47 CFR 1.925(b)(3) remains the appropriate vehicle to seek relief from the electronic payment requirement. As we assess and implement U.S. Treasury initiatives toward an all-electronic payment system, we may transition to other secure payment systems with appropriate public notice and guidance.

III. Ordering Clauses

9. Accordingly, *it is ordered,* that pursuant to sections 4(i), 4(j), 158, 208, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 158, 208, and 224, the Order is hereby *adopted* and the rules set forth in the Appendix of the Order are hereby *amended* effective August 14, 2023.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 80

Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, and 80 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

■ 2. Amend § 0.482 by revising the first sentence to read as follows:

§ 0.482 Application for waiver of wireless radio service rules.

All requests for waiver of the rules (see § 1.925 of this chapter) governing the Wireless Radio Services (see § 1.907 of this chapter) that require a fee (see § 1.1102 of this chapter) shall be submitted via the Universal Licensing System. * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 4. Amend § 1.907 by revising the definition of ''Receipt date'' to read as follows:

§ 1.907 Definitions.

* * * * *

Receipt date. The date an electronic application is received at the appropriate location at the Commission.

* * * * *

■ 5. Amend § 1.913 by revising the section heading to read as follows:

§ 1.913 Application and notification forms; electronic filing.

* * * * *

■ 6. Amend § 1.1102 by revising the last sentence of paragraph (a) to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

* * * * *

(a) * * * Manual filings and/or payments for these services are no longer accepted.

* * * * *

■ 7. Amend § 1.1109 by revising the introductory text to read as follows:

§ 1.1109 Schedule of charges for applications and other filings for the Homeland services.

Payments should be made electronically using the Commission's electronic filing and payment system in accordance with the procedures set forth on the Commission's website, *www.fcc.gov/licensing-databases/fees.* Manual filings and/or payments for these services are no longer accepted.

* * * * *

■ 8. Amend § 1.1111 by revising paragraph (b) to read as follows:

§ 1.1111 Payment of charges.

* * * * *

(b) Applicants may access the Commission's on-line filing systems at *https://www.fcc.gov/licensing-databases/online-filing,* and the Commission's fee payment module through the FRN access page of the Commission's Registration System at *https://apps.fcc.gov/cores/paymentFrnLogin.do.* Applicants who use the on-line processes will be directed to the appropriate electronic application and payment forms for completion and submission of the required application(s) and payment information.

* * * * *

■ 9. Amend § 1.2107 by revising the first sentence of paragraph (b) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(b) Unless otherwise specified by public notice, within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must electronically submit to the Commission such additional funds (the ''down payment'') as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). * * *

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 10. The authority citation for part 80 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

■ 11. Amend § 80.59 by revising the first sentence in paragraph (c)(2) to read as follows:

§ 80.59 Compulsory ship inspections.

* * * * *

(c) * * *

(2) Feeable applications for exemption must be filed electronically using the Commission's Universal Licensing System. * * *

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[FR Doc. 2023–14498 Filed 7–12–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.230508–0124; RTID 0648–XD072]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Actions #1–#10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason modification of 2023 management measures.

SUMMARY: NMFS announces ten inseason actions for the 2023–2024 ocean salmon fishing season. These inseason actions modify the commercial salmon troll fisheries in the area from the U.S./Canada border to Cape Falcon, OR.

DATES: The effective date for these inseason actions are set out in this document under the heading ''Inseason Actions'' and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, 562–980–4239, *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The annual management measures for the 2023 and early 2024 ocean salmon fisheries (88 FR 30235, May 11, 2023) govern the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2023, until the effective date of the 2024 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south of Cape Falcon (Cape Falcon, OR, to the U.S./Mexico border). The action described in this document affects the NOF commercial salmon troll fisheries, as set out under the heading ''Inseason Actions'' below.

Consultation with the Council Chairperson on these inseason actions occurred on May 16, 2023, May 24, 2023, and June 8, 2023. These consultations included representatives from NMFS, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and California Department of Fish and Wildlife. Representatives from the Salmon Advisory Subpanel and Salmon Technical Team were also present. A Council representative was present on May 24, 2023, and June 8, 2023.

These inseason actions were announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

Authorization for Inseason Actions #1–#10

The NMFS West Coast Regional Administrator (RA) considered the 2023 abundance forecasts for Chinook salmon stocks, the timing of the actions relative to the length of the season, and determined that these inseason actions described below are necessary to meet management and conservations goals for the 2023–2024 management measures. These inseason actions modified quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

Inseason Action #1

Description of the action: Inseason action #1 modifies the NOF ocean salmon troll commercial fishery. The area between the U.S./Canada border and the Queets River (La Push and Neah Bay subareas) is closed.

Effective dates: Inseason action #1 takes effect on May 17, 2023, at 12:01 a.m. and remains in effect until superseded.

Reason for the action: The area between the U.S./Canada border and the Queets River (La Push and Neah Bay subareas) was closed through inseason action under the 2022–2023 management measures (88 FR 37479, June 8, 2023) from May 11, 2023, to May 15, 2023. The 2023 management measures (88 FR 30235, May 11, 2023) set the start of the season on Tuesday, May 16, 2023, however, the landing week adopted in the 2023 management measures is Thursday–Wednesday. To remain consistent with the fishing season as adopted into regulation, the fishery was closed in order for managers to take subsequent action to align the initial open fishery period with the landing week as defined in the 2023 management measures.

Inseason Action #2

Description of the action: Inseason action #2 modifies the NOF ocean salmon troll commercial fishery. The landing and possession limit in the area between the U.S./Canada border and Cape Falcon is 150 Chinook salmon per vessel per landing week (Thursday–Wednesday) May 17, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #2 took effect on May 17, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #2 was necessary to align the landing and possession limit for the area between the U.S./Canada border to Cape Falcon under the 2022–23 management measures (adopted through inseason action (88 FR 37479, June 8, 2023)) for fisheries occurring after May 15, 2023, with fisheries that occurred from May 11, 2023, through May 15, 2023.

Inseason Action #3

Description of the action: Inseason action #3 modifies the NOF ocean salmon troll commercial fishery. The area between the U.S./Canada border and the Queets River (La Push and Neah Bay subareas) is open. For the area between the U.S./Canada border and the Queets River, the landing and possession limit is 35 Chinook salmon per vessel per landing week (Thursday–Wednesday) May 18, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #3 took effect on May 18, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #3 opens the area from the U.S./Canada border and the Queets River (La Push and Neah Bay subareas) that was previously closed on May 11, 2023 (88 FR 37479, June 8, 2023). In addition, the landing and possession limit that was put in place for the landing week from May 1, 2023, to May 10, 2023, was reduced from 70 Chinook salmon to 35

Chinook salmon per vessel per landing week (Thursday–Wednesday). This adjustment was necessary in order to not exceed the Chinook salmon guideline in the area due to high Chinook salmon catch to date and to preserve the length of the season.

Inseason Action #4

Description of the action: Inseason #4 modifies the NOF commercial salmon troll fishery. The landing and possession limit in the area between the Queets River and Leadbetter Point (Westport subarea) is 200 Chinook salmon per vessel per landing week (Thursday–Wednesday) May 15, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #4 took effect on May 25, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #4 increases the landing and possession limit for the Westport subarea from 150 Chinook salmon to 200 Chinook salmon. Due to lower than anticipated catch rates, this action will result in increased fishing interest and allow greater access to the quota for the area without exceeding it.

Inseason Action #5

Description of the action: Inseason #5 modifies the NOF commercial salmon troll fishery. The landing and possession limit in the area between Leadbetter Point and Cape Falcon (Columbia River subarea) is 80 Chinook salmon per vessel per landing week (Thursday–Wednesday) May 25, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #5 took effect on May 25, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #5 increases the landing and possession limit for the area between Leadbetter Point and Cape Falcon (Columbia River subarea) from 60 Chinook salmon to 80 Chinook salmon. The action was taken because of lower than anticipated catch rates. This action will result in increased fishing interest and allow greater access to the quota without exceeding it.

Inseason Action #6

Description of the action: Inseason #6 modifies the NOF commercial salmon troll fishery. The landing and possession limit in the area between the U.S./Canada border and Cape Falcon is 200 Chinook salmon per vessel per landing week (Thursday–Wednesday) May 25, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #6 took effect on May 25, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #6 increases the area NOF landing and possession limit from 150 Chinook salmon to 200 Chinook salmon to match the landing and possession limit of the largest of the subareas from the Queets River to Leadbetter Point (Westport subarea).

Inseason Action #7

Description of the action: Inseason #7 modifies the NOF commercial salmon troll fishery. The landing and possession limit in the area between Leadbetter Point and Cape Falcon (Columbia River subarea) is 100 Chinook salmon per vessel per landing week (Thursday–Wednesday) June 8, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #7 took effect on June 8, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #7 increases the landing and possession limit in the area between Leadbetter Point and Cape Falcon (Columbia River subarea) from 80 Chinook salmon to 100 Chinook salmon. This action will allow for better fishing opportunities to harvest the remaining quota and subarea caps without exceeding them.

Inseason Action #8

Description of the action: Inseason action #8 modifies the NOF commercial salmon troll fishery. The landing and possession limit in the area between the Queets River and Leadbetter Point (Westport subarea) is 250 Chinook salmon per vessel per landing week (Thursday–Wednesday) June 8, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #8 took effect on June 8, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #8 increases the landing and possession limit in the area between the Queets River and Leadbetter Point (Westport subarea) from 200 Chinook salmon to 250 Chinook salmon. This action will allow for better fishing opportunities to harvest the remaining quota and subarea caps without exceeding them.

Inseason Action #9

Description of the action: Inseason action #9 modifies the NOF commercial salmon troll fishery. The landing and possession limit in the area between the Queets River and the U.S./Canada border (La Push and Neah Bay subareas) is 40 Chinook salmon per vessel per landing week (Thursday–Wednesday) June 9, 2023, through June 21, 2023, and for the period June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #9 took effect on June 8, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #9 increases the landing and possession limit in the area between the Queets River and the U.S./Canada border (La Push and Neah Bay subareas) from 35 Chinook salmon to 40 Chinook salmon. This action will allow for better fishing opportunities to harvest the remaining quota and subarea caps without exceeding them.

Inseason Action #10

Description of the action: Inseason action #10 modifies the NOF commercial salmon troll fishery. The landing and possession limit in the area between the U.S./Canada border and Cape Falcon is 250 Chinook salmon per vessel per landing week (Thursday–Wednesday) June 8, 2023, through June 21, 2023, and for the period June 22, 2023, through June 22, 2023, through June 29, 2023.

Effective dates: Inseason action #10 took effect on June 8, 2023, at 12:01 a.m. and remains in effect until June 29, 2023, at 11:59 p.m.

Reason for the action: Inseason action #10 increases the landing and possession limit in the area NOF from 200 Chinook salmon to 250 Chinook salmon. This action will allow for better fishing opportunities to harvest the remaining quota without exceeding it.

All other restrictions and regulations remain in effect as announced for the 2023 ocean salmon fisheries (88 FR 30235, May 11, 2023).

The RA determined that these inseason actions were warranted based on the best available information on Pacific salmon abundance forecasts, landings and effort patterns to date, anticipated fishery effort and projected catch, and the other factors and considerations set forth in 50 CFR 660.409. The States and tribes manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off the coasts of the States of Washington, Oregon, and California

consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the actions became effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook and coho salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotlines and radio notifications. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (88 FR 30235, May 11, 2023), the Pacific Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–14721 Filed 7–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065]

RTID 0648–XD147

Fisheries of the Exclusive Economic Zone Off Alaska; Blackspotted and Rougheye Rockfish in the Central Aleutian and Western Aleutian Districts of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of blackspotted and rougheye rockfish in the Central Aleutian and Western Aleutian districts (CAI/WAI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2023 blackspotted and rougheye rockfish initial total allowable catch (ITAC) in the CAI/WAI of the BSAI has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 10, 2023, through 2400 hours, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2023 blackspotted and rougheye rockfish ITAC in the CAI/WAI of the BSAI is 141 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023 and 88 FR 18258, March 28, 2023). In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2023 blackspotted and rougheye rockfish ITAC in the CAI/WAI of the BSAI has been reached. Therefore, NMFS is requiring that blackspotted and rougheye rockfish in the CAI/WAI of the BSAI be treated in the same manner as a prohibited species, as described under § 679.21(a), for the remainder of the year, except blackspotted and rougheye rockfish species in the CAI/WAI caught by catcher vessels using hook-and-line, pot, or jig gear as described in § 679.20(j).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibited retention of blackspotted and rougheye rockfish in the CAI/WAI of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 7, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–14820 Filed 7–10–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 133

Thursday, July 13, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1409; Project Identifier MCAI–2022–01645–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) 2019–07–05, which applies to all Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2019–07–05 requires repetitive inspections for cracking of the 10VU rack fitting lugs and repair of any cracking. Since the FAA issued AD 2019–07–05, it was determined that certain repetitive inspection intervals need to be revised. This proposed AD would retain the requirements of AD 2019–07–05, with reduced compliance times and would remove airplanes having a certain modification from the applicability. 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 August 28, 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–2023–1409; 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 Airbus SAS service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* website *airbus.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 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–2023–1409; Project Identifier MCAI–2022–01645–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 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 2019–07–05, Amendment 39–19616 (84 FR 16386, April 19, 2019; corrected May 10, 2019 (84 FR 20542)) (AD 2019–07–05), for all Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2019–07–05 was prompted by an MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2018–0131, dated June 19, 2018 (EASA AD 2018–0131), to correct an unsafe condition.

AD 2019–07–05 requires repetitive inspections for cracking of the 10VU rack fitting lugs, and repair of any cracking. The FAA issued AD 2019–07–

05 to address reading difficulties of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

Actions Since AD 2019–07–05 Was Issued

Since the FAA issued AD 2019–07–05, EASA superseded EASA AD 2018–0131 and issued EASA AD 2022–0266, dated December 22, 2022 (EASA AD 2022–0266) (referred to after this as the MCAI) to correct an unsafe condition on certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231 and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. Airplanes on which Airbus modification 157335 has been embodied in production are not included in the applicability because modification 157335 addresses the unsafe condition. The MCAI states that during an unscheduled maintenance operation on an A330 airplane, the 10VU rack was removed for access and cracks were discovered on 10VU rack side fittings on lugs 1, 3 and 4. As a similar design is installed on A320 family airplanes, a sampling review was done to determine the possible fleet impact. The result showed that several airplanes had cracked or broken 10VU rack side fittings. This condition, if not detected and corrected, could lead to a high vibration level on the primary flight and navigation displays during critical flight phases (take-off and landing), possibly creating reading difficulties for the crew.

Since EASA AD 2018–0131 was issued, it was determined that certain repetitive inspection intervals need to be revised, based on in-service reports and completed analysis. This proposed AD would retain the requirements of AD 2019–07–05, with reduced compliance times and airplanes on which Airbus modification 157335 has been embodied in production removed from the applicability. The FAA is proposing this AD to address reading difficulties of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1409.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Service Bulletins A320–92–1087, Revision 04, dated May 16, 2022; and A320–92–1119, Revision 02, dated May 16, 2022. This service information specifies procedures for repetitive inspections for cracking of the 10VU rack fitting lugs, and repair of any cracking. 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.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2019–07–05. This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD would also require sending the inspection results to Airbus SAS.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 461 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
Inspections (retained actions from AD 2019–07–05).	2 work-hours × $85 per hour = $170	$0	$170	$78,370

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $85 per product.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
83 work-hours × $85 per hour = $7,055	$9,140	$16,195

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public

reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) 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 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) 2019–07–05, Amendment 39–19616 (84 FR 16386, April 19, 2019; corrected May 10, 2019 (84 FR 20542)); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–1409; Project Identifier MCAI–2022–01645–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

This AD replaces AD 2019–07–05, Amendment 39–19616 (84 FR 16386, April 19, 2019; corrected May 10, 2019 (84 FR 20542)) (AD 2019–07–05).

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus modification 157335 has been embodied in production.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 92, Electric and electronic common installation.

(e) Unsafe Condition

This AD was prompted by a report of cracks found during maintenance inspections on certain 10VU rack fitting lugs, and a determination that certain compliance times need to be revised. The FAA is issuing this AD to address reading difficulties of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

(f) Compliance

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

(g) Retained Definitions, With No Changes

This paragraph restates the definitions of paragraph (g) of AD 2019–07–05, with no changes. For the purpose of this AD, Group 1 airplanes are in a pre-Airbus Modification 35869 configuration, and Group 2 airplanes are in a post-Airbus Modification 35869 configuration.

(h) Retained Repetitive Inspections, With Reduced Inspection Intervals and Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2019–07–05, with reduced inspection intervals and revised service information.

(1) For Group 1 airplanes: At the later of the times specified in Figure 1 to paragraph (h)(1) of this AD, do a detailed inspection for cracking of the 10VU rack fitting lugs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1087, Revision 04, dated May 16, 2022. Repeat the inspection thereafter at intervals not to exceed 10,000 flight cycles or 20,000 flight hours, whichever occurs first.

Figure 1 to paragraph (h)(1)—Initial Inspection Compliance Time for Group 1 Airplanes

Compliance Time (whichever occurs later, A or B)	
A	Prior to exceeding 30,000 total flight cycles or 60,000 total flight hours, whichever occurs first; or within 24 months after November 22, 2016 (the effective date of AD 2016-19-14, Amendment 39-18663 (81 FR 71602, October 18, 2016)) (AD 2016-19-14); whichever occurs later
B	Within 24 months after the effective date of this AD, without exceeding 20,000 flight cycles or 40,000 flight hours, whichever occurs first, since the most recent inspection done as specified in Airbus Service Bulletin A320-92-1087

(2) For Group 2 airplanes: At the later of the times specified in Figure 2 to paragraph (h)(2) of this AD, do a detailed inspection for cracking of the 10VU rack fitting lugs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1119, Revision 02, dated May 16, 2022. Repeat the inspection thereafter at intervals not to exceed 10,000 flight cycles or 20,000 flight hours, whichever occurs first.

Figure 2 to paragraph (h)(2)—Initial Inspection Compliance Time for Group 2 Airplanes

Compliance Time (whichever occurs later, A or B)	
A	Prior to exceeding 30,000 total flight cycles or 60,000 total flight hours, whichever occurs first; or within 30 days after May 24, 2019 (the effective date of AD 2019-07-05); whichever occurs later.
B	Within 24 months after the effective date of this AD, without exceeding 20,000 flight cycles or 40,000 flight hours, whichever occurs first, since the most recent inspection done as specified in Airbus Service Bulletin A320-92-1119

(i) Retained Repair, With Revised Service Information

This paragraph restates the requirements of paragraph (i) of AD 2019–07–05, with revised service information. If any crack is found during any inspection required by paragraph (h)(1) or (2) of this AD: Before further flight, do a repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1087, Revision 04, dated May 16, 2022 (for Group 1 airplanes); or Airbus Service Bulletin A320–92–1119, Revision 02, dated May 16, 2022 (for Group 2 airplanes); as applicable. Repair of a 10VU rack fitting lug does not terminate the repetitive inspections required by paragraphs (h)(1) and (2) of this AD.

(j) Reporting Requirement

At the applicable time specified in paragraph (j)(1) or (2) of this AD: Submit a report of findings (positive and negative) of each inspection required by paragraph (h) of this AD to Airbus Service Bulletin Reporting Online Application on Airbus World (*airbus.com*) or in accordance with B. ''Reporting Sheet'' of the Appendix of Airbus Service Bulletin A320–92–1087, Revision 04, dated May 16, 2022 (for Group 1 airplanes); or Airbus Service Bulletin A320–92–1119, Revision 02, dated May 16, 2022 (for Group 2 airplanes); as applicable.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(k) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (h)(1) and (i) of this AD, if those actions were performed before May 24, 2019 (the effective date of AD 2019–07–05), using Airbus Service Bulletin A320–92–1087, dated March 28, 2011, which is not incorporated by reference in this AD; or Airbus Service Bulletin A320–92–1087, Revision 01, dated May 17, 2011, which is not incorporated by reference in this AD; or Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014, which was incorporated by reference in AD 2016–19–14.

(2) This paragraph provides credit for actions required by paragraphs (h)(1) and (i) of this AD, if those actions were performed before the effective date of this AD, using Airbus Service Bulletin A320–92–1087, Revision 03, dated July 31, 2017, which was incorporated by reference in AD 2019–07–05.

(3) This paragraph provides credit for actions required by paragraphs (h)(2) and (i) of this AD, if those actions were performed before the effective date of this AD, using Airbus Service Bulletin A320–92–1119, dated July 28, 2017, which was incorporated by reference in AD 2019–07–05; or Airbus Service Bulletin A320–92–1119, Revision 01, dated August 5, 2019, which is not incorporated by reference in this AD.

(4) This paragraph provides credit for the reporting required by paragraph (j)(2) of this AD, if that action was performed before the effective date of this AD in accordance with the instructions of Airbus Service Bulletin A320A–92–1087, Revision 03, dated July 31, 2017 (for Group 1 airplanes); or Airbus Service Bulletin A320–92–1119, dated July 28, 2017 (for Group 2 airplanes); as applicable; except where Figure A–FAAAA, Sheet 02, of Appendix 01, ''Inspection Report,'' of Airbus Service Bulletin A320–92–1087, Revision 03, dated July 31, 2017; and Figure A–FAAAA, Sheet 02, of Appendix 01, ''Inspection Report,'' of Airbus Service Bulletin A320–92–1119, dated July 28, 2017; specifies sending removed lugs to Airbus for investigation, that action is not required by this AD. Airbus Service Bulletin

A320A–92–1087, Revision 03, dated July 31, 2017; and Airbus Service Bulletin A320–92–1119, dated July 28, 2017; were incorporated by reference in AD 2019–07–05.

(l) Additional AD Provisions

(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 the address identified in paragraph (m)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email.

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

(ii) Global AMOC AIR–676–19–305, dated July 29, 2019, approved as an AMOC for AD 2019–07–05, is approved as an AMOC for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the European Union Aviation Safety Agency (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 (l)(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.

(m) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0266, dated December 22, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1409.

(2) For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov.*

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

(n) 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) Airbus Service Bulletin A320–92–1087, Revision 04, dated May 16, 2022.

(ii) Airbus Service Bulletin A320–92–1119, Revision 02, dated May 16, 2022.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* website *airbus.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 July 7, 2023.

Michael Linegang,

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

[FR Doc. 2023–14779 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 91

[Docket No. FAA–2023–1351; Notice No. 23–09a]

RIN 2120–AL61

Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges; Correction

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

ACTION: Notice of proposed rulemaking (NPRM); Correction.

SUMMARY: On June 23, 2023, the Federal Aviation Administration (FAA) published the notice of proposed rulemaking, Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges. In that document, the FAA inadvertently provided an incorrect docket number in the heading. This correction corrects that error.

DATES: This correction is effective July 13, 2023.

FOR FURTHER INFORMATION CONTACT: Jabari Raphael, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; (202) 267–1088; email *Jabari.Raphael@faa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc 2023–12600, beginning on page 41194 in the issue of June 23, 2023, make the following correction to the docket number on page 41194, in the first column, in the header of the document: Docket No. FAA–2023–1351.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) on July 3, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2023–14575 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1528; Airspace Docket No. 23–ASW–9]

RIN 2120–AA66

Amendment of VOR Federal Airways V–20, V–222, V–289, V–552, V–569 and V–574, and Establishment of United States Area Navigation (RNAV) Routes T–483 and T–485 in the Vicinity of Beaumont, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–20, V–222, V–289, V–552, V–569, and V–574, and establish United States Area Navigation (RNAV) routes T–483 and T–485. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Beaumont, TX (BPT), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Beaumont VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before August 28, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1528

and Airspace Docket No. 23–ASW–9 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: 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 would modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

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, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and United States Area Navigation Routes (T-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

The FAA is planning to decommission the Beaumont, TX, VOR in March 2024. The Beaumont VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Beaumont, TX, VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The VOR Federal airways affected by the Beaumont VOR decommissioning are V–20, V–222, V–289, V–552, V–569, and V–574. With the planned decommissioning of the Beaumont VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, proposed modifications to V–20 and V–222 would result in gaps in those airways and to V–289, V–552, V–569, and V–574 would result in the airways being shortened.

To address the proposed modifications to the affected VOR Federal airways, instrument flight rules (IFR) traffic could use portions of adjacent VOR Federal airways V–70, V–194, V–306, and V–407, or receive air traffic control (ATC) radar vectors to fly through or around the affected area. Additionally, IFR pilots operating aircraft equipped with RNAV

capabilities could also use RNAV routes T–224 and T–254 or navigate point to point using the existing fixes and waypoints that would remain in place to support continued operations though the affected area. Visual flight rules pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

Further, the FAA proposes to establish two new RNAV routes, T–483 and T–485, that pilots of aircraft equipped with RNAV capabilities could use to navigate point to point in support of continued operations though the affected area. RNAV route T–483 would mitigate the proposed removal of the affected V–289 airway segment and RNAV route T–485 would mitigate the proposed removal of the affected V–569 airway segment. The new T-routes would provide RNAV equipped aircraft ATS route alternatives between the SHWNN, TX, waypoint (WP) located near the Beaumont, TX, VOR/DME and the Lufkin, TX, VOR/Tactical Air Navigation (VORTAC), reduce ATC sector workload and complexity, reduce pilot-to-controller communication, and support the FAA's continued NextGen efforts to modernize the NAS navigation system from a ground-based system to a satellite-based system.

The Proposal

The FAA is proposing to amend 14 CFR part 71 to amend VOR Federal airways V–20, V–222, V–289, V–552, V–569, and V–574, and establish RNAV routes T–483 and T–485. The ATS route amendments and establishments are due to the planned decommissioning of the VOR portion of the Beaumont, TX, VOR/DME. The proposed ATS route actions are described below.

V–20: V–20 currently extends between the McAllen, TX, VOR/DME and the Palacios, TX, VORTAC; between the Beaumont, TX, VOR/DME and the Montgomery, AL, VORTAC; and between the Athens, GA, VOR/DME and the Richmond, VA, VORTAC. The airspace on the main airway above 14,000 feet MSL from Mc Allen to 49 miles northeast and the airspace within Mexico is excluded. The FAA proposes to remove the airway segment between the Beaumont VOR/DME and the Lake Charles, LA, VORTAC. Additionally, the exclusion for the airspace on the main airway above 14,000 feet MSL from Mc Allen to 49 miles northeast would be removed as it has not been required since the V–20 south alternate airway was removed in 1994 and there is no operational requirement to retain it. Further, the exclusion for the airspace within Mexico would be removed as the airway does not extend into Mexico's airspace. As amended, the airway would extend between the McAllen VOR/DME and the Palacios VORTAC, between the Lake Charles VORTAC and the Montgomery VORTAC, and between the Athens VOR/DME and the Richmond VORTAC.

V–222: V–222 currently extends between the El Paso, TX, VORTAC and the intersection of the LaGrange, GA, VORTAC 048° and Rome, GA, VORTAC 166° radials (TIROE fix). The FAA proposes to remove the airway segment between the Humble, TX, VORTAC and the Lake Charles, LA, VORTAC. As amended, the airway would extend between the El Paso VORTAC and the Humble VORTAC and between the Lake Charles VORTAC and the intersection of the LaGrange VORTAC 048° and Rome VORTAC 166° radials (TIROE fix).

V–289: V–289 currently extends between the Beaumont, TX, VOR/DME and the Vichy, MO, VOR/DME. The FAA proposes to remove the airway segment between the Beaumont VOR/DME and the Lufkin, TX, VORTAC. As amended, the airway would extend between the Lufkin VORTAC and Vichy VOR/DME.

V–552: V–552 currently extends between the Beaumont, TX, VOR/DME and the Monroeville, AL, VORTAC. The airspace within restricted area R–4403F is excluded during its times of use. The FAA proposes to remove the airway segment between the Beaumont VOR/DME and the Lake Charles, LA, VORTAC. As amended, the airway would extend between the Lake Charles VORTAC and the Monroeville VORTAC.

V–569: V–569 currently extends between the Beaumont, TX, VOR/DME and the Cedar Creek, TX, VORTAC. The FAA proposes to remove the airway segment between the Beaumont VOR/DME and the Lufkin, TX, VORTAC. As amended, the airway would extend between the Lufkin VORTAC and the Cedar Creek VORTAC.

V–574: V–574 currently extends between the Centex, TX, VORTAC and the Lake Charles, LA, VORTAC. The FAA proposes to remove the airway segment between the Daisetta, TX, VORTAC and the Lake Charles VORTAC. As amended, the airway would extend between the Centex VORTAC and the Daisetta VORTAC.

T–483: T–483 is a new RNAV route proposed to extend between the SHWNN, TX, WP, located near the Beaumont, TX, VOR/DME and the Lufkin, TX (LFK), VORTAC. The proposed T–483 would provide mitigation for the proposed removal of the V–289 airway segment between the Beaumont VOR/DME and the Lufkin VORTAC. The full T–483 route description is listed in the amendments to part 71 as set forth below.

T–485: T–485 is a new RNAV route proposed to extend between the SHWNN, TX, WP, located near the Beaumont, TX, VOR/DME and the Lufkin, TX (LFK), VORTAC. The proposed T–485 would provide mitigation for the proposed removal of the V–569 airway segment between the Beaumont VOR/DME and the Lufkin VORTAC. The full T–485 route description is listed in the amendments to part 71 as set forth below.

The NAVAID radials listed in the VOR Federal airway descriptions in the Proposed Amendment section below are unchanged and stated in degrees True north.

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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–20 [Amended]

From Mc Allen, TX; INT Mc Allen 038° and Corpus Christi, TX, 178° radials; 10 miles 8 miles wide, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; to Palacios. From Lake Charles, LA; Lafayette, LA; Reserve, LA; INT Reserve 084° and Gulfport, MS, 247° radials; Gulfport; Semmes, AL; INT Semmes 048° and Monroeville, AL, 231° radials; Monroeville; to Montgomery, AL. From Athens, GA; Electric City, SC; Sugarloaf Mountain, NC; Barretts Mountain, NC; South Boston, VA; to Richmond, VA.

* * * * *

V–222 [Amended]

From El Paso, TX; Salt Flat, TX; Fort Stockton, TX; 20 miles, 116 miles, 55 MSL, Junction, TX; Stonewall, TX; INT Stonewall 113° and Industry, TX, 267° radials; Industry; INT Industry 101° and Humble, TX, 259° radials; to Humble. From Lake Charles, LA; McComb, MS; Eaton, MS; Monroeville, AL; Montgomery, AL; LaGrange, GA; to INT LaGrange 048° and Rome, GA, 166° radials.

* * * * *

V–289 [Amended]

From Lufkin, TX; Gregg County, TX; Texarkana, AR; Fort Smith, AR; Harrison, AR; Dogwood, MO; INT Dogwood 058° and Vichy, MO, 204° radials; to Vichy.

* * * * *

V–552 [Amended]

From Lake Charles, LA; INT Lake Charles 064° and Lafayette, LA, 281° radials; Lafayette; Tibby, LA; Harvey, LA; Picayune, MS; Semmes, AL; INT Semmes 063° and Monroeville, AL, 216° radials; to Monroeville. The airspace within restricted area R–4403F is excluded during its times of use.

* * * * *

V–569 [Amended]

From Lufkin, TX; Frankston, TX; to Cedar Creek, TX.

* * * * *

V–574 [Amended]

From Centex, TX; INT Centex 116° and Navasota, TX, 258° radials; Navasota; Humble, TX; to Daisetta, TX.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–483 SHWNN, TX to Lufkin, TX (LFK) [New]

SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
HONEE, TX	FIX	(Lat. 30°24′21.96″ N, long. 094°24′59.99″ W)
Lufkin, TX (LFK)	VORTAC	(Lat. 31°09′44.79″ N, long. 094°43′00.60″ W)

* * * * * * *

T–485 SHWNN, TX to Lufkin, TX (LFK) [New]

SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
ROMER, TX	FIX	(Lat. 30°44′47.33″ N, long. 094°23′33.01″ W)
Lufkin, TX (LFK)	VORTAC	(Lat. 31°09′44.79″ N, long. 094°43′00.60″ W)

* * * * *

Issued in Washington, DC, on July 10, 2023.

Karen L. Chiodini,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–14839 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2023–0090; FRL–11014–03–R6]

Air Plan Approval; Oklahoma; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, extension of public comment period.

SUMMARY: On June 13, 2023, the Environmental Protection Agency (EPA) proposed a rule titled ''Air Plan Approval; Revision to Air Pollution Control Rules'' to approve revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma on January 30, 2023. The EPA is extending the comment period on this proposed rule that currently closes on July 13, 2023, to allow additional time for stakeholders to review and comment on the proposal.

DATES: The public comment period for the proposed rule published on June 13, 2023 (88 FR 38433), is extended. Written comments must be received on or before August 14, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R6–OAR–2023–0090, at *https://www.regulations.gov* or via email to *shahin.emad@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Emad Shahin, 214–665–6717, *shahin.emad@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: For information on the proposed rule on the Oklahoma SIP revisions addressing emissions of VOC, please contact Mr. Emad Shahin, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–6717, *shahin.emad@epa.gov.* The EPA encourages the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: To allow for additional time for stakeholders to provide comments, the EPA has decided to extend the public comment periods as indicated in the **DATES** section of this document.

Dated: June 29, 2023.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2023–14434 Filed 7–12–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DOI–2023–0008; 234D0104IG, DG10100000, DIG000000.000000]

RIN 1090–AB27

Privacy Act Regulations; Exemption for Investigative Records

AGENCY: Office of Inspector General, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior (DOI) is proposing to amend its regulations to exempt certain records in the INTERIOR/OIG–02, Investigative Records, system of records from one or more provisions of the Privacy Act of 1974 because of criminal, civil, and administrative law enforcement requirements.

DATES: Submit comments on or before September 11, 2023.

ADDRESSES: You may submit comments, identified by docket number [DOI–2023–0008] or Regulatory Information Number (RIN) Number 1090–AB27, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0008] or RIN 1090–AB27 in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0008] or RIN 1090–AB27 for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information about individuals that is maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

Individuals may request access to records containing information about themselves under the Privacy Act, 5 U.S.C. 552a(b), (c) and (d). However, the Privacy Act authorizes Federal agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation pursuant to 5 U.S.C. 552a(j) and (k).

The Office of Inspector General (OIG) maintains the INTERIOR/OIG–02, Investigative Records, system of records to help facilitate the OIG's various responsibilities under the Inspector General Act of 1978, as amended. The OIG is statutorily directed to conduct and supervise investigations relating to programs and operations of the DOI, to promote economy, efficiency, and effectiveness in the administration of programs and operations, and to prevent and detect fraud, waste, and abuse in such programs and operations. Accordingly, records in the system are used during the course of conducting investigations on individuals and entities suspected of misconduct, fraud, waste, and abuse, other illegal or unethical acts, and in conducting related criminal prosecutions, civil proceedings, and administrative actions. The system also contains records of complaints, requests to investigate, and administrative referrals; records of case initiation; reports, correspondence, notes and memoranda generated by OIG regarding investigations; and records on complainants, subjects, and victims.

The system notice for INTERIOR/OIG–02, Investigative Records, system of records was previously published in the **Federal Register** at 76 FR 60519 (September 29, 2011), modification published at 86 FR 50156 (September 7, 2021). An updated system of records notice was published elsewhere in the **Federal Register** denoting updates to the modified INTERIOR/OIG–02, Investigative Records, system of records.

Under 5 U.S.C. 552a(j) and (k), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of the Privacy Act. The INTERIOR/OIG–02, Investigative Records, system contains records related to law enforcement investigations that are exempt from provisions of the Privacy Act, 5 U.S.C. 552a(j) and (k). The DOI previously promulgated regulations at 43 CFR 2.254 to exempt records in this system from all provisions of the Privacy Act except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) pursuant to 5 U.S.C. 552a(j)(2); and to exempt records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

In this notice of proposed rulemaking (NPRM), DOI is proposing to claim additional exemptions from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(3), and (k)(5) because this system of records contains material that support activities related to investigations. The OIG may waive exemptions on a case-by-case basis where a release would not interfere with or reveal investigatory material compiled for law enforcement purposes, or reveal records on suitability,

eligibility, or qualifications for Federal employment, military service, Federal contracts, or access to classified information, or compromise confidential sources. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. Records in this system may contain investigatory records and material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Release of accounting of disclosures would alert the subjects of an investigation to the existence of the investigation, law enforcement activity or investigation, and the fact that they are subjects of the investigation, or could disclose confidential information that could be detrimental to national security. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature and scope of an investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Records in this system may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Granting access to these records in the system could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, the nature and scope of the information and evidence obtained, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, as well as their families; lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; and disclose investigative techniques and procedures. In addition, granting access to such information could disclose confidential information that could impact national security or could constitute an unwarranted invasion of the personal privacy of others.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after information is evaluated that the relevance and necessity of such information can be established for an investigation. In addition, during the course of an investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. The application of this provision could provide the subject of an investigation with substantial information about the nature and scope of that investigation, could provide information to enable the subject to avoid detection or apprehension, seriously impede or compromise an investigation, or the fabrication of testimony, and disclose investigative techniques and procedures. Additionally, the application of this section could cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promise(s) of anonymity and confidentiality. This could compromise OIG's ability to conduct investigations and to identify, detect and apprehend violators.

Procedural Requirements

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

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is not significant.

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

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221)). This proposed rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act. This proposed rule is not a major rule under 5 U.S.C. 804(2). This proposed rule:

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

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

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

3. Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on State, local, or tribal Governments in the aggregate, or on the private sector, of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local, or tribal Governments or the private sector. This proposed rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

4. Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have

significant takings implications. This proposed rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

5. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this proposed rule does not have any federalism implications to warrant the preparation of a federalism assessment. The proposed rule is not associated with, nor will it 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 assessment is not required.

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

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the Federal judicial system.

(b) 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

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

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

In accordance with Executive Order 13175, the Department of the Interior has evaluated this proposed rule and determined that it would have no substantial effects on Federally Recognized Indian Tribes.

8. Paperwork Reduction Act

This proposed rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is not required.

9. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.,* is not required because the proposed rule is covered by a categorical exclusion. We have determined the proposed rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

10. Effects on Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A statement of energy effects is not required.

11. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (Pub. L. 111–274), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each proposed rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and table wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461, the Social Security Number Fraud Prevention Act of 2017, Pub. L. 115–59, September 15, 2017.

■ 2. Amend § 2.254 by adding paragraphs (b)(3), (d)(3), and (e)(8) to read as follows:

§ 2.254 Exemptions.

* * * * *

(b) * * *

(3) INTERIOR/OIG–02, Investigative Records.

(d) * * *

(3) INTERIOR/OIG–02, Investigative Records.

(e) * * *

(8) INTERIOR/OIG–02, Investigative Records.

* * * * *

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2023–14881 Filed 7–12–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 75

RIN 0945–AA19

Health and Human Services Grants Regulation

AGENCY: Office for Civil Rights (OCR), Office of the Assistant Secretary for Financial Resources (ASFR), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: This is a notice of proposed rulemaking (NPRM) to repromulgate and revise certain regulatory provisions of the HHS, Uniform Administrative Rule Requirements, Cost Principles, and Audit Requirements for HHS Awards, previously set forth in a final rule published in the **Federal Register**.

DATES: *Comments:* Submit comments on or before September 11, 2023.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 0945–AA19, by any of the following methods. Please do not submit duplicate comments.

Federal Rulemaking Portal: You may submit electronic comments at *https://regulations.gov* by searching for the Docket ID number HHS–OCR–2023–0011. Follow the instructions for submitting electronic comments. If you are submitting comments electronically, the Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in scanned format. Using a print-to-PDF allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

Regular, Express, or Overnight Mail: You may mail written comments to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: HHS Grants Rulemaking (RIN–0945–AA19), Washington, DC 20201.

All comments received by the methods and due date specified above may be posted without change to content to *https://www.regulations.gov,* which may include personal information provided about the

commenter, and such posting may occur after the closing of the comment period. However, the Department may redact certain non-substantive content from comments before posting, including threats, hate speech, profanity, graphic images, or individually identifiable information about a third-party individual other than the commenter. In addition, comments or material designated as confidential or not to be disclosed to the public will not be accepted. Comments may be redacted or rejected as described above without notice to the commenter, and the Department will not consider in rulemaking any redacted or rejected content that would not be made available to the public as part of the administrative record.

Because of the large number of public comments normally received on **Federal Register** documents, OCR is not able to provide individual acknowledgements of receipt.

Please allow sufficient time for mailed comments to be received timely in the event of delivery or security delays.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

Docket: For complete access to background documents or posted comments, go to *https://www.regulations.gov* and search for Docket ID number HHS–OCR–2023–0011.

FOR FURTHER INFORMATION CONTACT: Office for Civil Rights, Daniel Shieh, Associate Deputy Director, HHS Office for Civil Rights, (202) 240–3110 or (800) 537–7697 (TDD), or via email at *hhsocrgrants@hhs.gov* for matters related to the HHS Grants Rulemaking.

SUPPLEMENTARY INFORMATION: This is an NPRM proposing to repromulgate provisions of the Uniform Administrative Requirements, 45 CFR part 75, set forth in the rule published in the **Federal Register** at 81 FR 89393 (December 12, 2016). (2016 Rule). The 2016 Rule is currently subject to a Notice of Nonenforcement, 84 FR 63809 (November 19, 2019), which states that the Department will rely upon its enforcement discretion to not enforce the regulatory provisions adopted or amended by the 2016 Rule. On the same day that the Department issued the Notice of Nonenforcement, it also issued an NPRM proposing revisions to the 2016 Rule. After a 30-day comment period, during which the Department received over 100,000 comments, a final rule was published in January 2021. 86 FR 2257 (January 12, 2021) (2021 Rule). The 2021 Rule was challenged in the U.S. District Court for the District of Columbia, *Facing Foster Care et al.* v. *HHS,* 21–cv–00308 (D.D.C. filed Feb. 2, 2021). The 2021 Rule was to be effective on February 11, 2021, but the effective date was extended via several postponements by the court in *Facing Foster Care* under 5 U.S.C. 705. On June 29, 2022, the court granted the Department's motion for remand with vacatur, and ''ordered that those portions of the U.S. Department of Health and Human Services ('HHS') regulation entitled Health and Human Services Grants Regulation, 86 FR 2257 (Jan. 12, 2021), that amend 45 CFR 75.101(f), 75.300(c), and 75.300(d), are hereby VACATED and REMANDED to HHS.'' [1] Through this NPRM, the Department now proposes to repromulgate with certain exceptions and revisions those provisions of the 2021 Rule that were vacated and remanded to the Department.

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I. Background

A. Background and Rulemaking

On December 26, 2013, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (UAR or uniform regulations) that ''set standard requirements for financial management of Federal awards across the entire federal government.'' 78 FR 78590 (Dec. 26, 2013). On December 19, 2014, OMB and other Federal award-making agencies, including the Department, issued an interim final rule to implement the UAR. 79 FR 75867 (Dec. 19, 2014). OMB's purpose in promulgating the uniform regulations was to (1) streamline guidance in making Federal awards to ease administrative burden and (2) strengthen financial oversight over Federal funds to reduce risks of fraud, waste, and abuse.[2]

On July 13, 2016, the Department issued an NPRM proposing changes to its adoption of the 2014 UAR Interim Final Rule.[3] The 2016 Rule was promulgated pursuant to OMB's uniform regulations that ''set standard requirements for financial management of Federal awards across the entire federal government,'' 2 CFR part 200; 5 U.S.C. 301; and the Chief Financial Officers Act of 1990, Public Law 101–576, now at 31 U.S.C. 503.[4] The NPRM, entitled the ''Health and Human Services Grants Rule,'' proposed changes to:

- Section 75.102, concerning requirements related to the Indian Self-Determination and Education Assistance Act (ISDEAA);
- Section 75.300, concerning certain public policy requirements and Supreme Court cases, and § 75.101, concerning the applicability of those provisions to the Temporary Assistance for Needy Families Program (Title IV–A of the Social Security Act, 42 U.S.C. 601–19);
- Section 75.305, concerning the applicability to states of certain payment provisions;
- Section 75.365, concerning certain restrictions on public access to records;
- Section 75.414, concerning indirect cost rates for certain grants; and
- Section 75.477, concerning shared responsibility payments and payments for failure to offer health coverage to employees.

On December 12, 2016, the Department finalized all of these provisions with the exception of proposed § 75.102. *See* 81 FR 89393.[5] The 2016 Rule went into effect on January 11, 2017.

On February 27, 2018, the State of South Carolina sent a letter to the Department's Administration for Children and Families (ACF) on behalf of the state's faith-based organizations, seeking a waiver from the 2016 Rule's religious nondiscrimination requirements. On January 23, 2019, ACF sent South Carolina a letter approving

[1] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. June 29, 2022), ECF No. 44.

[2] 78 FR 78590 (Dec. 26, 2013); 85 FR 3766 (Jan. 22, 2020).

[3] 81 FR 45270 (July 13, 2016).

[4] 78 FR 78590 (Dec. 26, 2013).

[5] The 2016 Rule also made a technical change not set forth in the proposed rule, amending § 75.110(a) by removing ''75.355'' and adding, in its place, ''75.335.''

the state's waiver request from the religious nondiscrimination requirement of 45 CFR 75.300(c).

On November 19, 2019, the Department issued a Notice of Nonenforcement, 84 FR 63809, which stated that the Department would rely upon its enforcement discretion to not enforce the regulatory provisions adopted or amended by the 2016 Rule. The Department stated that such nonenforcement was due to issues regarding the 2016 Rule's compliance with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–12 (RFA). The 2019 Notice of Nonenforcement stated that the Department was concerned over whether the 2016 Rule provided a sufficient rationale and certification that the rule would not have a significant economic impact on a substantial number of small entities, or a sufficient final regulatory flexibility analysis at the time of publication. The 2019 Notice of Nonenforcement was challenged in the U.S. District Court for the Southern District of New York in *Family Equality* v. *Azar,* 20–cv–02403 (S.D.N.Y. filed Mar. 19, 2020); the suit was dismissed on March 30, 2022, for lack of subject-matter jurisdiction.[6] The case is on appeal in the Second Circuit, while the 2019 Notice of Nonenforcement remains in effect.[7]

On March 5, 2020, in response to a lawsuit filed by the State of Texas against the Department challenging the 2016 Rule, *Texas* v. *Azar,* 3:19–cv–00365 (S.D. Tex. Oct. 31, 2019), OCR sent a letter informing Texas of OCR's conclusion that the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.,* prohibited the Department from applying 45 CFR 75.300(c) and (d) against Texas with respect to the Archdiocese of Galveston-Houston, a religious foster-care service provider, and ''other similarly situated entities.''

On November 3, 2020, in response to a separate lawsuit filed against the Department, *Buck* v. *Gordon,* 1:19–cv–00286 (W.D. Mich. Apr. 15, 2019), OCR sent the Michigan Department of Health and Human Services a letter informing them of OCR's conclusion that RFRA likewise prohibited the Department from applying 45 CFR 75.300(c) against Michigan with respect to the St. Vincent Catholic Charities, a religious foster-care service provider, and ''other similarly situated entities.''

On the same day the Department issued the 2019 Notice of Nonenforcement, it published an NPRM proposing to ''repromulgate some of the provisions of the [2016] Final Rule, not to repromulgate others, and to replace or modify certain provisions that were included in the Final Rule with other provisions.'' 84 FR 63831 (Nov. 19, 2019). After a 30-day comment period and receipt of over 100,000 comments, on January 12, 2021, the Department repromulgated portions of and issued amendments to the 2016 Rule, 86 FR 2257 (2021 Rule). Specifically, from the 2016 Rule, the 2021 Rule repromulgated provisions of 45 CFR part 75 and made amendments to 45 CFR 75.300(c) and (d). Section 75.300(c) previously prohibited discrimination in the administration of programs supported by HHS awards ''based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation.'' The 2021 Rule amended § 75.300(c) to prohibit discrimination in these programs ''to the extent doing so is prohibited by federal statute.''

Section 75.300(d) had previously stated that ''all recipients must treat as valid the marriages of same-sex couples'' consistent with the Supreme Court decisions in *United States* v. *Windsor* and *Obergefell* v. *Hodges.* The 2021 Rule amended § 75.300(d) to state that ''HHS will follow all applicable Supreme Court decisions.''

Shortly after the 2021 Rule's issuance, portions of the amendments to § 75.300 and a conforming amendment at § 75.101(f) were challenged in the U.S. District Court for the District of Columbia. *Facing Foster Care* v. *HHS,* 21–cv–00308 (D.D.C. Feb. 2, 2021). On June 17, 2022, the Department filed a motion for remand with vacatur the challenged portions of the 2021 Rule. The Department noted that because HHS had ''reviewed only a small fraction of the non-duplicative comments, did not employ a sampling methodology likely to produce an adequate sample of the comment received, and did not explain its use of sampling in the final rule, Defendants have concluded, in the circumstances of this case, that the 2021 Rule was promulgated in violation of the [Administrative Procedure Act].''[8] On June 29, 2022, the court ordered that the challenged portions of 45 CFR 75.101(f), 75.300(c), and 75.300(d) be vacated and remanded to HHS.[9]

On November 18, 2021, HHS issued letters to South Carolina, Michigan, and Texas with respect to previously granted waivers under RFRA for participation in the Title IV–E program (the HHS-administered adoption and foster care program). The letters noted that because HHS had issued the 2019 Notification of Nonenforcement, which stated that HHS would not enforce the non-discrimination requirements under the 2016 Rule, the RFRA waivers were unnecessary, and thus, rescinded. The letters further explained that the previously granted waivers had misapplied the applicable RFRA standards and were therefore withdrawn.

B. Additional Background

On June 15, 2020, the U.S. Supreme Court held that Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2(a)(1) (Title VII), prohibits discrimination on the basis of sex, which includes discrimination based on sexual orientation and gender identity. *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020). *Bostock* concluded that the plain meaning of ''because of . . . sex'' in Title VII necessarily included discrimination because of sexual orientation and gender identity. *Id.* at 1753–54. After *Bostock,* circuit courts concluded that the plain language of the Title IX of the Education Amendments of 1972, 20 U.S.C. 1681(a), prohibition on sex discrimination must be read similarly. *See Grimm* v. *Gloucester Cty. Sch. Bd.,* 972 F.3d 586 (4th Cir. 2020), *cert. denied,* 141 S. Ct. 2878 (2021); *see also Doe* v. *Snyder,* 28 F.4th 103, 114 (9th Cir. 2022) (applying *Bostock's* reasoning to the prohibitions on sex discrimination in Title IX and Section 1557 of the Affordable Care Act, 42 U.S.C. 18116). *But cf. Adams* v. *School Bd. of St. Johns Co.,* 57 F.4th 791, 811–15 (11th Cir. 2022) (en banc) (recognizing that *Bostock* instructs that the exclusion of a transgender student from the bathroom consistent with his gender identity was exclusion on the basis of ''sex,'' but that such exclusion was permitted by Title IX's ''express statutory and regulatory carve-outs'' for living and bathroom facilities).

On January 20, 2021, President Biden issued Executive Order (E.O.) 13988, 86 FR 7023, 7023–24, which directed Federal agencies to review all agency actions, including regulations, ''as necessary to fully implement statutes that prohibit sex discrimination,'' and determine if they were inconsistent with *Bostock* reasoning.[10]

[6] See Order, *Family Equality* v. *Azar,* No. 20–cv–02403 (S.D.N.Y. Mar. 30, 2022), ECF No. 62.

[7] *Family Equality* v. *Becerra,* No. 22–1174 (2d Cir. filed May 27, 2022).

[8] *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. June 17, 2022), ECF No. 41.

[9] See id., Order (June 29, 2022), ECF No. 44. Because they were not subject to the order of vacatur, certain provisions previously adopted in the 2021 Rule remain in effect. These provisions are: 45 CFR 75.305, 75.365, 75.414, and 75.417.

[10] In *Neese* v. *Becerra,* No. 2:21–cv–00163 (N.D. Tex., Nov. 10, 2022), the U.S. District Court for the

C. Summary of the Proposed Rule

Because the 2021 Rule's amendments to 45 CFR 75.101(f), 75.300(c), and 75.300(d) were vacated and remanded to HHS, the Department proposes to repromulgate some provisions from the 2016 Rule as well as other provisions with changes. Specifically, the Department is proposing not to reinstate former § 75.101(f), as found in both the 2016 and 2021 Rules; is proposing revisions to § 75.300(c) and (d) from the 2016 Rule; and is proposing to add new § 75.300(e) and (f), not found in either the 2016 or the 2021 Rules.

1. Applicability (§ 75.101)

Proposed section 75.101 provides for the applicability of the 2014 UAR Rule. The 2016 Rule included a provision at § 75.101(f) providing that § 75.300(c) (prohibiting discrimination on a range of bases in the administration of programs supported by HHS awards) would ''not apply to the Temporary Assistance for Needy Families Program (title IV–A of the Social Security Act, 42 U.S.C. 601–619).'' This was repromulgated in the 2021 Rule and is subject to the order of vacatur.

The Department does not propose to add paragraph (f) in § 75.101, which was included in the 2016 Rule to ensure that the specific statutory requirements of the Temporary Assistance for Needy Families Program (Title IV–A of the Social Security Act, 42 U.S.C. 601–619) (TANF) governed applicable grants. This language is not necessary under the proposed language of 45 CFR 75.300, because the latter is already limited to applicable statutory nondiscrimination requirements and the TANF statute, 42 U.S.C. 608(d), already identifies the nondiscrimination provisions that apply to TANF.

2. Statutory and National Policy Requirements (§ 75.300)

Section 75.300 provides the statutory and policy requirements for the 2014 UAR Rule. The Department proposes to keep paragraphs (a) and (b) of § 75.300 unchanged from the 2016 Rule, which provides: ''(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: Including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award. (b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2324 and 2409, and 41 U.S.C. 4304, 4310, and 4712.''

This NPRM proposes to repromulgate § 75.300(c) from the 2021 Rule to provide: ''It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by federal statute.'' This revises the 2016 Rule, which provided at 45 CFR 75.300(c), in relevant part, ''It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation.'' The Department also proposes to repromulgate § 75.300(d) from the 2021 Rule to provide, ''HHS will follow all applicable Supreme Court decisions in administering its award programs.'' This revises the 2016 Rule, which provided at 45 CFR 75.300(d), ''In accordance with the Supreme Court decisions in *United States* v. *Windsor* and in *Obergefell* v. *Hodges,* all recipients must treat as valid the marriages of same-sex couples. This does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage.'' As discussed more fully below in Part II, Section A, the Department's proposals reflect its reconsideration in light of arguments concerning the Housekeeping Statute, 5 U.S.C. 301, raised in litigation challenging a different HHS rule, and HHS's desire to provide stability and clarity in its programs.

Finally, the Department proposes to add a § 75.300(e), which clarifies the Department interpretation of the prohibition of discrimination on the basis of sex to include (1) discrimination on the basis of sexual orientation and (2) discrimination on the basis of gender identity, consistent with the Supreme Court's decision in *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020)), and other Federal court precedent applying *Bostock's* reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity.[11] Proposed § 75.300(e) applies to 13 HHS authorities that prohibit discrimination on the basis of sex in health and human services programs.

The Department seeks comment on whether the Department administers other statutes prohibiting sex discrimination that are not set forth in proposed § 75.300(e) or whether the Department should include language or guidance in § 75.300(e) to cover current or future laws that prohibit sex discrimination that are not set forth above.

Bostock held that a plain reading of Title VII's prohibition on discrimination ''because of . . . sex'' encompassed discrimination based on sexual orientation or transgender status. According to the Court, a straightforward application of the terms ''discriminate,'' ''because of,'' and ''sex'' means that ''it is impossible to discriminate against a person'' for being gay or transgender ''without

Northern District of Texas declared unlawful a May 10, 2021 notification titled, ''Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972,'' which applied *Bostock* to Title IX and Section 1557. On January 20, 2023, the Department appealed that decision to the Fifth Circuit Court of Appeals. That appeal is pending.

[11] *Bostock's* reasoning applies with equal force to claims alleging discrimination on the basis of sex characteristics, including intersex traits, because discrimination based on anatomical or physiological sex characteristics (such as genitals, gonads, chromosomes, hormone function, and brain development/anatomy) is inherently sex-based. Discrimination on the basis of intersex traits, therefore, is prohibited sex discrimination because the individual is being discriminated against based on their sex characteristics. If their sex characteristics were different—*i.e.,* traditionally ''male'' or ''female''—the intersex person would be treated differently. Moreover, like gender identity and sexual orientation, intersex traits are ''inextricably bound up with'' sex, and ''cannot be stated without referencing sex.'' *Bostock,* 140 S. Ct. at 1742; *see also Grimm,* 972 F.3d at 608 (quoting *Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034, 1051 (7th Cir. 2017)).

In addition to *Bostock,* the Department continues to interpret sex discrimination to prohibit discrimination on the basis of sex stereotypes, which can include stereotypes regarding sex characteristics and intersex traits, consistent with longstanding Supreme Court precedent. *See Los Angeles, Dep't of Water & Power* v. *Manhart,* 435 U.S. 702 (1978); *Price Waterhouse* v. *Hopkins,* 490 U.S. 228 (1989)).

discriminating against that individual based on sex.'' [12]

The 13 statutes listed in proposed § 75.300(e) each contain prohibitions on sex discrimination. None of the 13 statutes contain any indicia—such as statute-specific definitions, or any other criteria—to suggest that these prohibitions on sex discrimination should be construed differently than Title VII's sex discrimination prohibition. Nor is the Department aware of reported case law requiring such a construction. Accordingly, this rule proposes to interpret the prohibition on sex discrimination by applying *Bostock's* reasoning that sex discrimination includes discrimination on the basis of sexual orientation and gender identity with respect to programs, activities, projects, assistance, and services that receive Federal financial assistance under these statutes which the Department administers [13] and over which OCR maintains civil rights enforcement authority.[14]

As described further below, the 13 listed statutes contain minor variations in the language used to prohibit sex discrimination, sometimes within the same statute, but the Department does not believe any of the variations can be reasonably understood to distinguish the various statutes from *Bostock's* reasoning.

Nine of the statutes listed in proposed § 75.300(e) prohibit discrimination ''on the basis of'' sex, using language identical to the sex discrimination prohibition in Title IX.[15] For example, the Public Health Service Act, prohibits the Secretary from providing certain funding to nursing schools unless the school ''furnishes assurances . . . that it will not discriminate on the basis of sex.'' [16] Seven of the statutes identified in proposed 75.300(e) prohibit discrimination ''on the ground of . . . sex.'' [17] For example, the Preventive Health and Health Services Block Grant provides that ''no person shall on the ground of sex . . . be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this part.'' [18] One statute states that a grant or contract must provide that the recipient of financial assistance will not ''discriminate . . . because of . . . sex,'' [19] the same language from Title VII that the Supreme Court analyzed in *Bostock.* Finally, two of the statutes identified in proposed § 75.300(e) require services to be provided ''without regard to . . . sex.'' [20] For the purposes of this rulemaking, the Department does not believe that any of these variations are legally significant, or that these statutes should be interpreted in a way that diverges from the Court's interpretation of Title VII's language ''because of . . . sex'' in *Bostock.*[21]

Based on this statutory construction, it is logical in this context to apply *Bostock's* reasoning that sex discrimination includes discrimination on the basis of sexual orientation and gender identity to each of these independent nondiscrimination provisions. Many courts, including the Supreme Court, have concluded that varied verbal formulations in antidiscrimination statutes should be interpreted consistently with one another.[22] In *Bostock* itself, for example, the Court used both ''on the basis of'' and ''because of'' throughout the decision to describe the unlawful discrimination at issue.[23]

Discriminating against individuals in any of the programs, activities, projects, assistance, and services covered by the statutes in § 75.300(e) on the basis of sexual orientation or gender identity necessarily involves discriminating against them on the basis of sex. Section 75.300(e) makes this interpretation clear to the public.

The Department seeks comments on whether there is anything about any of the statutes referenced in proposed § 75.300(e), such as their language, legislative history, or purpose, that would provide a legal basis for distinguishing them from *Bostock's* interpretation of Title VII, that sex discrimination includes discrimination on the basis of sexual orientation and gender identity.

3. Notification of Views Regarding Application of Federal Religious Freedom Laws

The Department takes seriously its obligations to comply with Federal religious freedom laws, including the First Amendment and RFRA, and it will continue to comply with these legal obligations. The Department is fully committed to respecting religious freedom laws and to thoroughly considering any organization's assertion that the provisions of this rule conflict with their rights under those laws.[24] In determining whether an action is ''prohibited by federal statute'' under proposed § 75.300(c), the Department will consider RFRA in its analysis when applicable. This proposal is similar to the process laid out in the Section 1557 NPRM under proposed § 92.302, 87 FR 47885–47886, which is consistent with the Department's broader commitment to abiding by the First Amendment and RFRA.

In applying RFRA, exemptions from the nondiscrimination requirements of this rule would depend on application of RFRA's test, which provides that the government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of

[12] 140 S. Ct. at 1742.

[13] Authorized by the Omnibus Budget Reconciliation Act of 1981 (OBRA), Public Law 97–35.

[14] *See* 47 FR 4348–02 (January 29, 1982) (delegating to the OCR Director ''civil rights enforcement authority contained in the Health and Human Services Block Grants prescribed by the Omnibus Budget Reconciliation Act of 1981.'').

[15] 42 U.S.C. 290ff–1; 42 U.S.C. 290cc–33; 42 U.S.C. 295m; 42 U.S.C. 296g; 42 U.S.C. 300w–7; 42 U.S.C. 300x–57; 42 U.S.C. 708; 42 U.S.C. 9918; 42 U.S.C. 10406.

[16] 42 U.S.C. 296g.

[17] 42 U.S.C. 290cc–33(a)(2); 42 U.S.C. 300w–7; 42 U.S.C. 300x–57(a)(2); 42 U.S.C. 708(a)(2); 42 U.S.C. 5151(a); 42 U.S.C. 8625; 42 U.S.C. 10406(c)(2)(B).

[18] 42 U.S.C. 300w–7; see also OBRA, Public Law 97–35, 47 FR 4348–02.

[19] 48 U.S.C. 9849(a).

[20] 42 U.S.C. 295m; 8 U.S.C. 1522.

[21] Five of the listed statutes contain separate provisions prohibiting discrimination both ''on the basis of sex under Title IX'' and ''on the grounds of sex.'' One statute contains separate provisions prohibiting discrimination ''on the basis of sex'' and requiring services to be provide ''without regard to . . . sex.'' 42 U.S.C. 295m. Another statute contains separate provisions prohibiting discrimination ''because of . . . sex'' and ''on the ground of sex.'' 42 U.S.C. 9849. Another statute contains a provision with the heading ''Prohibition on discrimination on the basis of sex, religion,'' which states, ''[n]o person shall on the ground of sex or religion be excluded.'' 42 U.S.C. 10406(c)(2)(B).

[22] *See, e.g., Franklin* v. *Gwinnett Cnty. Pub. Sch.,* 503 U.S. 60, 75 (1992) (Title IX imposes ''the duty not to discriminate *on the basis of* sex, and 'when a supervisor sexually harasses a subordinate *because of* the subordinate's sex, that supervisor ''discriminate[s]'' *on the basis of* sex' '') (quoting *Meritor Sav. Bank, FSB* v. *Vinson,* 477 U.S. 57, 64 (1986)) (emphases added); *Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616–17 (4th Cir. 2020) (holding that *Bostock's* reasoning applies to Title IX, which prohibits discrimination ''on the basis of sex,'' explaining that ''[a]lthough *Bostock* interprets Title VII . . . , it guides our evaluation of claims under Title IX''); *Gentry* v. *E. W. Partners Club Mgmt. Co. Inc.,* 816 F.3d 228, 235–36 (4th Cir. 2016) (''The ADA prohibits discrimination 'on the basis of' disability. We see no 'meaningful textual difference' between this language and the terms 'because of,' 'by reason of,' or 'based on' ''); *Lakoski* v. *James,* 66 F.3d 751, 757 (5th Cir. 1995) (explaining that even though Title IX uses the phrase ''on the basis of sex'' and Title VII uses the phrase ''because of . . . sex,'' ''the prohibitions of discrimination on the basis of sex of Title IX and Title VII are the same'').

[23] *See, e.g., Bostock,* 140 S. Ct. at 1738 (''on the basis of sex.''); *id.* at 1741 (''because of sex'').

[24] No religious liberty claim was before the Court in *Bostock.* The Court said the interaction of doctrines protecting religious liberty with statutory nondiscrimination prohibitions were ''questions for future cases.'' 140 S. Ct. at 1754.

furthering that compelling governmental interest. 42 U.S.C. 2000bb–1(b). The U.S. Supreme Court has recognized that a fact-sensitive, case-by-case analysis of such burdens and interests is needed under RFRA,[25] and the Department applies RFRA accordingly.

In proposed § 75.300(f), the Department specifically addresses the application of Federal religious freedom protections. This proposed provision is new, as neither the 2016 nor 2021 Rules provided a specific, optional means for recipients to notify the Department of their views regarding the application of Federal religious freedom laws.[26] Proposed § 75.300(f) provides that, at any time, a recipient may raise with the Department, their belief that the application of a specific provision or provisions of this regulation as applied to the recipient would violate Federal religious freedom protections. Such laws include, but are not limited to, the First Amendment and RFRA. Upon receipt of a notification, the Department first assesses whether there is a sufficient, concrete factual basis for making a determination based on the request.

Proposed § 75.300(f) provides that once the awarding agency, working jointly with ASFR or OCR (in the course of investigating a civil rights complaint or compliance review), receives a notification from a recipient seeking a religious exemption, the awarding agency, working jointly with either ASFR or OCR, would promptly consider the recipient's views that they are entitled to an exemption in (1) responding to any complaints or (2) otherwise determining whether to proceed with any investigation or enforcement activity regarding that recipient's compliance with the relevant provisions of this regulation, in legal consultation with the Office of the General Counsel (OGC).[27] A recipient may also on their own initiative, before a complaint is filed or an investigation opened, seek an exemption based upon the application of a religious freedom law, and the Department would assess whether there is a sufficient, concrete factual basis prior to making any determination. Any relevant ongoing investigation or enforcement activity regarding the recipient would be held in abeyance until a determination has been made. Considering recipients' specific religious-based concerns in the context of an open case or a claim raised in the first instance by a particular recipient (*i.e.,* when the Department first has cause to consider the recipient's compliance, whether through a complaint filed against the recipient, or through the recipient raising the exemption on their own initiative), would allow the awarding agency, working with ASFR, or OCR, in legal consultation with OGC, to make an informed, case-by-case decision and, where required by law, protect a recipient's religious freedom rights and minimize any harm an exemption could have on third parties. As the Supreme Court noted in *Gonzales* v. *O Centro Espírita Beneficente União do Vegetal,* ''[C]ourts should strike sensible balances, pursuant to a compelling interest test that requires the Government *to address the particular practice at issue.*'' 546 U.S. 418, 439 (2006) (emphasis added). The Department believes that the process set forth under proposed § 75.300(f) properly strikes that balance. Similarly, holding ongoing investigations and enforcement activity in abeyance alleviates the burden of a recipient having to respond to an investigation or enforcement action until a recipient's objection has been considered.

Further, proposed § 75.300(f) makes clear the awarding agency's, ASFR's, and OCR's discretion to determine at any time whether a recipient is wholly or partially exempt from certain provisions of this part under Federal religious liberty protections, whether: (1) after a complaint is raised against the recipient or (2) raised by the recipient before a complaint is filed (provided the Department has a sufficient, concrete factual basis for determining whether the recipient is entitled to an exemption). Proposed § 75.300(f) requires that, in determining whether a recipient is exempt from the application of the specific provision or provisions raised in its notification, ASFR or OCR, in consultation with OGC, must assess whether there is a sufficient, concrete factual basis for making a determination and apply the applicable legal standards of the religious freedom statute at issue.

Proposed § 75.300(f) also provides that, upon making a determination regarding whether a particular recipient is exempt from—or subject to a modified requirement under—a specific provision of this part, the awarding agency, working with ASFR or OCR, will communicate that determination to the recipient in writing. The written notification will clearly set forth the scope, applicable issues, duration, and all other relevant terms of any exemption.

Proposed § 75.300(f) provides that if the awarding agency, working with ASFR or OCR, in legal consultation with OGC, determines that a recipient is entitled to an exemption or modification of the application of certain provisions of this rule based on the application of religious liberty protections, that determination does not otherwise limit the application of any other Federal law to the recipient.

HHS maintains an important civil rights interest in the proper application of Federal religious freedom protections. HHS is thus committed to complying with RFRA and all other applicable legal requirements. The Department believes that this proposed approach will assist the Department in fulfilling that commitment by providing the opportunity for recipients to raise concerns with the Department, such that the Department can determine whether an exemption or modification of the application of certain provisions is appropriate under the corresponding Federal religious freedom law. As noted above, the Department also maintains a strong interest in taking a case-by-case approach to such determinations that will allow it to account for and minimize any harm an exemption could

[25] *See, e.g., Gonzales* v. *O Centro Espírita Beneficente União do Vegetal,* 546 U.S. 418, 430–31 (2006) (when applying RFRA, courts look ''beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants''); *cf. Ramirez* v. *Collier,* 142 S. Ct. 1264, 1281 (2022) (holding that the Religious Land Use and Institutionalized Persons Act, which applies RFRA's test for religious exemptions in the prison context, ''requires that courts take cases one at a time, considering only 'the particular claimant whose sincere exercise of religion is being substantially burdened' '') (*quoting Holt* v. *Hobbs,* 574 U.S. 352, 363 (2015)).

[26] While 45 CFR 75.102 allows for exceptions on a case-by-case basis to part 75, which the Department had previously used to issue the RFRA waivers to South Carolina, Michigan, and Texas, it is best read to, and has been historically used to, address requests for exceptions that pertain to financial and administrative management of federal grants, such as deviations from normal allowable costs, requirements applicable to for-profit subrecipients, costs requiring prior approval, or computation of depreciation, rather than providing exemptions from civil rights or anti-discrimination laws. *See, e.g., https://www.cfo.gov/assets/files/2CFR-FrequentlyAskedQuestions_2021050321.pdf* (guidance from the Office of Management and Budget indicating waivers under 45 CFR75.102 are primarily fiscal in nature); *https://www.hhs.gov/conscience/religious-freedom/state-letter-to-texas-withdrawing-exception-from-non-discrimination-requirements/index.html* (rescission letter of RFRA waiver).

[27] *See* 86 FR 67067 (Nov. 24, 2021) (the HHS Secretary ''delegate[s] responsibility to Department components to ensure full compliance with RFRA and other constitutional requirements'' and ''Department components must consult with OGC on such matters and provide appropriate consideration to RFRA- or Constitution-based objections or requests, as well as take any actions that may be appropriate.'').

have on third parties [28] and, in the context of RFRA, to consider whether the application of any substantial burden imposed on a person's exercise of religion is in furtherance of a compelling interest and is the least restrictive means of advancing that compelling interest.[29]

The Department seeks comment on this proposed approach, including whether such a provision should include additional procedures, the potential burdens of such a provision on recipients and potential third parties, and additional factors that the Department should take into account when considering the relationship between Federal statutory and constitutional rights to religious freedom and this rule's other civil rights protections. We also seek comment on what alternatives, if any, the Department should consider.

Finally, proposed § 75.300(g) provides that if any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from this part and not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

II. Reasons for the Proposed Rulemaking

A. The 2016 Rule and the Scope of 5 U.S.C. 301

HHS proposes to amend the language in 45 CFR 75.300(c) and (d) of the 2016 Rule in light of arguments raised concerning HHS's statutory authority under the Housekeeping Statute, 5 U.S.C. 301, and the financial management statutes cited in 2 CFR 200.103 and 45 CFR 75.103, including the Chief Financial Officer's Act, 31 U.S.C. 503; the Budget and Accounting Act, 31 U.S.C. 1101–1125; and the Single Audit Act, 31 U.S.C. 6101–6106. After considering those arguments, HHS is now of the view that its reliance on the Housekeeping Statute to promulgate § 75.300(c) and (d) of the 2016 Rule may have resulted in uncertainty about Department programs. We are accordingly proposing revisions to those paragraphs to explain more clearly to grantees and beneficiaries where and how nondiscrimination protections apply.

The Department has statutory authority to issue regulations to enforce certain government-wide statutory civil rights statutes, such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (prohibiting discrimination on the basis of race, color, or national origin in programs or activities receiving Federal financial assistance); Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 (prohibiting discrimination on the basis of sex in education programs or activities receiving Federal financial assistance), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (prohibiting discrimination on the basis of disability in programs and activities conducted by, or receiving financial assistance from, Federal agencies), and the Age Discrimination Act, 42 U.S.C. 6101 *et seq.* (prohibiting discrimination on the basis of age in programs and activities receiving Federal financial assistance). There are also certain program-specific statutory nondiscrimination provisions that provide the Department with the authority to issue enforcement regulations. These include section 471(a)(18) of the Social Security Act (SSA), 42 U.S.C. 671(a)(18) (prohibiting discrimination on the basis of race, color, or national origin in Title IV–E adoption and foster care programs) and section 508 of the SSA, 42 U.S.C. 708 (prohibiting discrimination on the basis of age, race, color, national origin, disability, sex, or religion in Maternal and Child Health Services Block Grant programs).[30]

Section 75.300(c) and (d) in the 2016 Rule, however, were promulgated under authority granted by the Housekeeping Statute, 5 U.S.C. 301. The Housekeeping Statute provides in relevant part: ''The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.''

Section 75.300(c) and (d) were issued to provide uniformity in Departmental non-discrimination requirements by ''codif[ying] for all HHS service grants what is already applicable for all HHS service contracts, as required by the HHS Acquisition Regulation (HHSAR) 352.237–74'' and which ''makes explicit HHS's non-discrimination policy when obligating appropriations for solicitations, contracts and orders that deliver service under HHS's programs directly to the public.'' 81 FR 45271.

The Supreme Court has explained that the Housekeeping Statute is ''a grant of authority to the agency to regulate its own affairs . . . authorizing what the [Administrative Procedure Act] terms 'rules of agency organization, procedure or practice' as opposed to 'substantive rules.'" *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 309–10 (1979). In 2019, a Federal district court vacated a different regulation the Department had promulgated, in part, under the Housekeeping Statute. *see New York* v. *HHS,* 414 F. Supp. 3d 475 (S.D.N.Y. 2019) (vacating ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,'' 84 FR 23170 (May 21, 2019) (codified at 45 CFR pt. 88)). That regulation interpreted and implemented Federal statutory provisions that ''recognize[d] the right of an individual or entity to abstain from participation in medical procedures, programs, services, or research activities on account of a religious or moral objection.'' *Id.* at 496. The court vacated the rule because it was substantive rather than a housekeeping measure, noting that ''[a] rule that announces new rights and imposes new duties—one that shapes the primary conduct of regulated entities—is substantive.'' *Id.* at 522.

After considering the arguments raised in *New York* concerning the Department's authority under 5 U.S.C. 301 and how they might apply here, the Department has reconsidered § 75.300(c) and (d) of the 2016 Rule. Pursuant to, and consistent with, its authority under 5 U.S.C. 301, the Department proposes to revise § 75.300(c) to recognize the public policy requirement that otherwise eligible persons not be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of programs, activities, projects, assistance, and services where such actions are prohibited by Federal statute. The Department considers the proposed language for paragraph (c) appropriate because it affirms that HHS grants programs will be administered consistent with the Federal statutes that govern the programs, including the nondiscrimination statutes that Congress has adopted and made applicable to the Department's programs. The adoption of regulatory language that makes compliance simpler and more predictable for Federal grant recipients is generally consistent with

[28] *See Cutter* v. *Wilkinson,* 544 U.S. 709, 720 (2005) (in addressing religious accommodation requests, ''courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries'').

[29] *Cf. O Centro,* 546 U.S. at 439 (''[C]ourts should strike sensible balances, pursuant to a compelling interest test that requires the Government *to address the particular practice at issue.*'') (emphasis added).

[30] The Department is authorized to issue regulations for the efficient administration of its functions in the Social Security Act programs for which it is responsible. See SSA § 1102(a), 42 U.S.C. 1302(a).

the concept of controlling regulatory costs and relieving regulatory burdens.

The Department also proposes to revise § 75.300(d) to state that the Department will follow all applicable Supreme Court decisions in the administration of the Department's award programs. Section 75.300(d) notes that HHS will comply with Supreme Court decisions generally, rather than referencing specific Supreme Court cases. This approach simplifies compliance for federal grant recipients.

The Department believes the proposed language of § 75.300(c) and (d) confirms that its programs must comply with all applicable laws and Supreme Court decisions, and allows its programs to minimize disputes and litigation, provide greater stability and certainty, and to remove regulatory barriers. OMB's UAR at 2 CFR 200.300 does not impose specific public policy requirements beyond federal statutory requirements. The Department considers it appropriate for § 75.300(c) to similarly focus on statutory requirements and for § 75.300(d) to inform grant recipients that the Department complies with applicable Supreme Court decisions in administering its grant programs.

The Department also proposes to add paragraph (e) to 45 CFR 75.300 to clarify the Department interprets preexisting prohibition against discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity. The Department believes that absent contrary statutory text, legislative history, or Supreme Court case law, the best way to understand statutory sex discrimination prohibitions is to apply the Supreme Court's reasoning in *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020), which issued after the 2021 rulemaking was already underway. Section 75.300(e) provides regulatory clarity to the public and helps facilitate the efficient and equitable administration of HHS grants.

The Department proposes to add paragraph (f) to 45 CFR 75.300 to state that it will comply with all federal religious freedom laws, including RFRA and the First Amendment. As explained above, the Department is fully committed to respecting religious freedom laws when applying this rule, including when an organization asserts that the application of the provisions of this rule conflict with their rights under those laws. Further, the Department proposes a workable exemption process, described above, that will assist the Department in fulfilling that commitment by providing the opportunity for recipients to raise recipient-specific concerns with the Department; allowing the Department to evaluate exemption requests on a case-by-case basis while accounting for third party harms; and providing written notification to provide a recipient certainty in its receipt of HHS grants.

Finally, as noted above, the Department proposes to add paragraph (g) to 45 CFR 75.300 to evidence the Department's intent that, should any of the provisions of this rule as finalized by invalidated, the rest remain intact.

B. Effect on the Notice of Nonenforcement

While this rulemaking process is ongoing, the 2019 Notice of Nonenforcement remains in effect.

III. Executive Order 12866 and Related Executive Orders on Regulatory Review

A. Executive Order 12866 Determination

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The proposed rule states that grant recipients may not discriminate to the extent prohibited by federal statutory nondiscrimination provisions, would provide that HHS complies with applicable Supreme Court decisions in administering its grant programs, and codifies in regulation Supreme Court precedent related to sex discrimination. We believe that this proposed rule is unlikely to result in economic impacts that exceed the threshold for significant effects as defined in section 3(1)(f) of Executive Order 12866, as amended by Executive Order 14094, because it does not impose new requirements but rather adds clarity for regulated entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires the Department to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

1. Alternatives Considered

The Department carefully considered several alternatives, but rejected them for the reasons explained below. The first alternative considered was to make no changes to the 2016 Rule. The Department concluded that this alternative would potentially lead to legal challenges, in part over the scope of the Department's authority under 5 U.S.C. 301, as discussed above. The second alternative considered was to maintain the text of the 2016 Rule, but also promulgate a regulatory exemption for faith-based organizations as provided under proposed 75.300(f). This alternative could address the religious exemption issues raised by the 2016 Rule's application to certain faith-based organizations that participate in, or seek to participate in, Department-funded programs or activities. However, the provisions of the 2016 Rule would be subject to the same legal challenges under 5 U.S.C. 301. The third alternative considered was to enumerate applicable nondiscrimination provisions and the programs and recipients/subrecipients to which the nondiscrimination provisions would apply, as set forth in 75.300(e) without including a religious exemption process. However, Federal religious freedom laws, such as the First Amendment and RFRA, generally apply to these nondiscrimination provisions, and providing a process by which such claims can be raised by recipients on a case-by-case basis helps ensure that the Department complies with its obligations under all these authorities.

2. Benefits

The benefits of the proposed rule help ensure that HHS grants programs will be administered fairly and consistently with Supreme Court precedent, Federal statutes that govern the programs covered in this rule, including the nondiscrimination statutes that Congress has adopted and made applicable to the Department's programs, and the U.S. Constitution. Proposed 45 CFR 75.300(c) makes compliance simpler and more predictable for federal grant recipients. Likewise, proposed 45 CFR 75.300(d) notes that HHS will comply with Supreme Court decisions, which also simplifies compliance for federal grant recipients. Proposed 45 CFR 75.300(e)

clarifies the Department's interpretation of prohibition of discrimination on the basis of sex includes discrimination on the basis of sexual orientation and gender identity, consistent with *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020), which provides additional regulatory clarity to the public and helps facilitate the efficient and equitable administration of HHS grants. This also provides the benefit of ensuring that individuals are not discriminated against on the basis of sexual orientation or gender identity, which while difficult to quantify, is of considerable value. Finally, proposed 45 CFR 75.300(f) states that the Department will comply with all federal religious freedom laws, including RFRA and the First Amendment, which will assist the Department in fulfilling that commitment by providing the opportunity for recipients to raise concerns with the Department and for those concerns to be evaluated on a case-by-case basis. These benefits for the fair and nondiscriminatory enforcement of the programs covered by this rule are not quantified.

3. Costs

Consistent with the 2021 Rule, OCR identifies potential costs associated with grantees becoming familiar with this proposed rule, and follows the analytic approach contained in its analysis. The Department issues many grants on an annual basis, and many recipients receive multiple grants. Based on information in the Department's Tracking Accountability in Government Grant Spending (TAGGS) system, the Department estimates that it has a total of 12,202 grantees.[31] Depending on the grantee, the task of familiarization could potentially fall to the following occupation categories: (1) lawyers, with a $65.26 median hourly wage; (2) general and operations managers, with a $47.16 median hourly wage; (3) medical and health services managers, with a $50.40 median hourly wage; (4) compliance officers, with a $34.47 median hourly wage; or (5) social and community service manager, with a $35.69 median hourly wage.[32] Across all grantees, we adopt a pre-tax hourly wage that is the average across the median hourly wage rates for these 5 categories, or $46.60 per hour. To compute the value of time for on the-job-activities, we adopt a fully loaded wage rate that accounts for wages, benefits, and other indirect costs of labor that is equal to 200% of the pre-tax wage rate, or $93.19 per hour. The Department anticipates that professional organizations, trade associations and other interested groups may prepare summaries of the proposed rule, if it is finalized. Accordingly, the Department estimates that it would take a typical grantee approximately one hour to become familiar with the proposed requirements. Thus, we expect that the average cost for each grantee would be $93.19. Across all 12,202 grantees, the cost of grantee familiarization would be approximately $1.1 million.

OCR considered additional potential sources of costs that would be attributable to the proposed rule. Parts (c)–(e) of the rule codifies for all covered grant what is already required by law. Some covered entities may bear the transaction costs associated with notifying the Department that they are seeking an exemption under proposed 45 CFR 75.300(f). However, there is no filing fee to seek an exemption with OCR, ASFR, or the awarding agency and the costs would only be those a covered entity chooses to expend.

Finally, to further quantity the costs associated with this proposed rule, the Department has attempted to estimate whether the number and composition of recipients changed in response to the prior two rulemakings and how those costs will impact this proposed rule. The 2016 Rule has never been enforced since it was promulgated on December 12, 2016, 81 FR 89383. The Department also issued a Notice of Nonenforcement in 2019, 84 FR 63831, that it would not enforce the 2016 Rule. And the 2021 Rule, 86 FR 2257, never went into effect. Because of this, the Department does not have any data with regard to whether the number and composition of recipients changed in response to prior rulemakings, as there was no change in the enforcement of these rules which would impact those grants.

However, the Department believes that its recipients generally fall into one of the following three categories in how they have been impacted by the prior two rulemakings.

The first category includes recipients that adopted the nondiscrimination practices *prior* to the 2016 Rule, whether voluntarily or as a result of state and/or local law. Their observance of nondiscrimination requirements is not the result of the 2016 Rule and thus, these recipients are not impacted by this proposed rule.

The second category includes recipients that had not adopted nondiscrimination practices prior to the 2016 Rule, but that complied since the 2016 Rule, including after the 2019 Notice of Nonenforcement was issued, 84 FR 63831, and until now. However, because the 2016 Rule did not contain any procedural enforcement mechanisms such as an assurance of compliance or adoption of a grievance process, it is difficult to quantity the costs, if any, incurred by this second category of recipients. These recipients would likely continue to follow such nondiscrimination practices voluntarily or because of new or newly enforced state and/or local laws, given that they could have declined to comply with the 2016 Rule requirements after the 2019 Notice of Nonenforcement issued, and yet have continued to comply with those requirements notwithstanding that notice. Thus, these recipients are similarly situated to the first category of recipients insofar as they are not impacted by whether or not the 2016 Rule is in effect.

The third category includes recipients that had not followed, and continue to not follow, the 2016 Rule. However, their practice was likely not impacted by the 2016 Rule, as the rule was not enforced, and the Department issued waivers under RFRA to South Carolina, Texas, and Michigan in 2019 and 2020 exempting those recipients from the 2016 Rule. Further, the Department issued the 2019 Notice of Nonenforcement which applied to all recipients covered by the 2016 Rule. Moreover, these recipients could not have relied upon the 2021 Rule, since that rule never went into effect. Since this proposed rule removes the 2016 Rule's requirements, and adds a religious exemption process, the Department expects that these grantees will continue their current practice 75.300(e) does not apply to the foster care programs at issue in the South Carolina, Texas, and Michigan cases, though they may additionally seek a religious exemption under 75.300(f) of the proposed rule, which will not materially bear on additional costs.

Thus, the Department believes that apart from familiarization costs and costs associated with filing a religious exemption request, there will be little to no economic impact associated with § 75.300(c) through(f). The Department solicits comments and additional data on the estimated costs of compliance.

3. Comparison of Costs and Benefits

In summary, the Department expects the benefits of regulatory clarity will simplify compliance and ensure fair and nondiscriminatory administration of covered programs under this rule. Costs associated with implementing this administrative change include costs for

[31] 86 FR 2257 at 2274.

[32] U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics. May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.* Accessed on June 13, 2022.

some covered entities who may seek an exemption. The Department solicits comments regarding this assessment of impacts.

B. RFA—Initial Small Entity Analysis

The Department has examined the economic implications of this proposed rule as required by the RFA (5 U.S.C. 601–612). The RFA requires an agency to describe the impact of a proposed rulemaking on small entities by providing an initial regulatory flexibility analysis unless the agency expects that the proposed rule will not have a significant impact on a substantial number of small entities, provides a factual basis for this determination, and proposes to certify the statement. 5 U.S.C. 603(a), 605(b). If an agency must provide an initial regulatory flexibility analysis, this analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. HHS generally considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least five percent of small entities.

As discussed, the proposed rule would:

- Require grant recipients to comply with applicable Federal statutory nondiscrimination provisions.
- Provide that HHS complies with applicable Supreme Court decisions in administering its grant programs.

Affected small entities include all small entities which may apply for HHS grants; these small entities operate in a wide range of sections involved in the delivery of health and human services. Grant recipients are required to comply with applicable Federal statutory nondiscrimination provisions by operation of such laws and pursuant to 45 CFR 75.300(a); HHS is required to comply with applicable Supreme Court decisions. Thus, there would be no additional economic impact associated with proposed sections 75.300(c)–(e). The Department anticipates that this rulemaking, if finalized, would primarily serve to provide information to the public. The Department anticipates that this information will allow affected entities to better deploy resources in line with established requirements for HHS grant recipients. As a result, HHS has determined, and the Secretary proposes to certify, that this proposed rule, if finalized, will not have a significant impact on the operations of a substantial number of small entities. The Department seeks comment on this analysis of the impact of the proposed rule on small entities, and the assumptions that underlie this analysis.

C. Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments or has Federalism implications. The Department has determined that this proposed rule does not impose such costs or have any Federalism implications.

D. E.O. 12250 on Leadership and Coordination of Nondiscrimination Laws

Pursuant to E.O. 12250, the Attorney General has the responsibility to ''review . . . proposed rules . . . of the Executive agencies'' implementing nondiscrimination statutes such as Title IX ''in order to identify those which are inadequate, unclear or unnecessarily inconsistent.'' The Attorney General has delegated that function to the Assistant Attorney General for the Civil Rights Division for purposes of reviewing and approving proposed rules. 28 CFR 0.51. The Department has coordinated with the Department of Justice to review and approve this proposed rule prior to publication in the **Federal Register**.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR part 1320 appendix A.1), the Department has reviewed this proposed rule and has determined that there are no new collections of information contained therein.

IV. Request for Comment

The Department seeks comment on this proposed rule, including its likely impacts as compared to the 2016 Rule. As noted above, the Department also seeks comment on whether the Department administers other statutes prohibiting sex discrimination that are not set forth in proposed § 75.300(e). Finally, the Department seeks comments from the public on whether there is anything about any of the statutes referenced in proposed § 75.300(e), such as their language, legislative history, or purpose, that would provide a legal basis for distinguishing them from *Bostock's* reasoning for Title VII.

List of Subjects in 45 CFR Part 75

Accounting, Administrative practice and procedure, Cost principles, Grant programs, Grant programs—health, Grants Administration, Hospitals, Nonprofit Organizations reporting and recordkeeping requirements, and State and local governments.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 75 as follows:

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

■ 1. The authority citation for 45 CFR part 75 continues to read as follows:

Authority: 5 U.S.C. 301, 2 CFR part 200.

■ 2. Amend § 75.300 by revising paragraphs (c) and (d), and adding paragraphs (e), (f), and (g) to read as follows:

§ 75.300 Statutory and national policy requirements.

* * * * *

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs, activities, projects, assistance, and services, to the extent doing so is prohibited by federal statute.

(d) HHS will follow all applicable Supreme Court decisions in administering its award programs.

(e) In statutes that HHS administers which prohibit discrimination on the basis of sex, the Department interprets those provisions to include a prohibition against discrimination on the basis of sexual orientation and gender identity, consistent with the Supreme Court's decision in *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020), and other federal court precedent applying *Bostock's* reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity. Paragraph (e) applies to the following HHS authorities that prohibit discrimination on the basis of sex: 8 U.S.C. 1522, Authorization for programs for domestic resettlement of and assistance to refugees; 42 U.S.C. 290cc–33, Projects for Assistance in Transition from Homelessness; 42 U.S.C. 290ff–1, Children with Serious Emotional Disturbances; 42 U.S.C. 295m, Title VII Health Workforce Programs; 42 U.S.C. 296g. Nursing Workforce Development; 42 U.S.C. 300w–7, Preventive Health Services Block Grant; 42 U.S.C. 300x–57, Substance Abuse Treatment and Prevention Block Grant; Community Mental Health Services Block Grant; 42 U.S.C. 708, Maternal and Child Health Block Grant; 42 U.S.C. 5151, Disaster relief; 42 U.S.C. 8625, Low Income

Home Energy Assistance Program; 42 U.S.C. 9849, Head Start; 42 U.S.C. 9918, Community Services Block Grant Program; and 42 U.S.C. 10406, Family Violence Prevention and Services.

(f)(1) At any time, a recipient may notify the HHS awarding agency, the Office of the Assistant Secretary for Financial Resources (ASFR), or the Office for Civil Rights (OCR) of the recipient's view that it is exempt from, or requires modified application of, certain provisions of this part due to the application of a federal religious freedom law, including the Religious Freedom Restoration Act (RFRA) and the First Amendment.

(2) Once the awarding agency, working jointly with ASFR or OCR, receives such notification from a particular recipient, they shall promptly consider those views in responding to any complaints, determining whether to proceed with any investigation or enforcement activity regarding that recipient's compliance with the relevant provisions of this part, or in responding to a claim raised by the recipient in the first instance, in legal consultation with the HHS Office of the General Counsel (OGC). Any relevant ongoing compliance activity regarding the recipient shall be held in abeyance until a determination has been made on whether the recipient is exempt from the application of certain provisions of this part, or whether modified application of the provision is required as applied to specific contexts, procedures, or services, based on a federal religious freedom law.

(3) The awarding agency, working jointly with ASFR or OCR, will, in legal consultation with OGC, assess whether there is a sufficient, concrete factual basis for making a determination and will apply the applicable legal standards of the relevant law, and will communicate their determination to the recipient in writing. The written notification will clearly set forth the scope, applicable issues, duration, and all other relevant terms of the exemption request.

(4) If the awarding agency, working jointly with ASFR or OCR, and in legal consultation with OGC, determines that a recipient is exempt from the application of certain provisions of this part or that modified application of certain provisions is required as applied to specific contexts, procedures, or services, that determination does not otherwise limit the application of any other provision of this part to the recipient or to other contexts, procedures, or services.

(g) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

Dated: July 6, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–14600 Filed 7–11–23; 11:15 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 305

RIN 0970–AC95

Modifications to Performance Standards During Natural Disasters and Other Calamities

AGENCY: Office of Child Support Services (OCSS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS or the Department).

ACTION: Notice of proposed rulemaking.

SUMMARY: OCSS proposes to provide temporary relief to states from certain child support program performance requirements and penalties during natural disasters and other calamities which have a negative impact on state child support program operations. The proposed rule would provide ACF with ongoing authority to modify performance measure requirements when states are affected by natural disasters and other calamities that have resulted, or are expected to result, in the failure of state child support programs to achieve performance standards for paternity establishment, support order establishment, and current collections. The proposed rule will enable states to avoid the imposition of penalties due to adverse data reliability audit findings during, and subsequent to, natural disasters and other calamities, including pandemics and declared public health emergencies.

DATES: Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before September 11, 2023.

ADDRESSES: You may submit comments, identified by [docket number and/or Regulatory Information Number (RIN) number (0970–AC95)], by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments may be submitted to: Office of Child Support Services, *Attention:* Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

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

FOR FURTHER INFORMATION CONTACT: Tricia John, Division of Policy and Training, OCSS, telephone (202) 260–7143. Email inquiries to *ocse.dpt@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Comments should be specific, address issues raised by the proposed rule, and explain reasons for any objections or recommended changes. Additionally, we will be interested in comments that indicate agreement with the proposal. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are relevant and are received during the comment period. We will respond to these comments in the preamble to the final rule.

Statutory Authority

This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act. The proposed relief from the support order establishment and current support collections performance measures may be waived, modified, or suspended through rulemaking under section 409(a)(8)(A)(i)(I) of the Act (42 U.S.C. 609(a)(8)(A)(i)(I)). The proposed relief from the paternity establishment percentage (PEP) performance measure and data reliability audit requirements related to the PEP under this NPRM is based on statutory authority granted under section 452(g)(3)(A) of the Act (42 U.S.C. 652(g)(3)(A)).

Justification

The purpose of this proposed rule is to authorize the Secretary to provide

targeted and time-limited relief to states from certain performance penalties due to the impact of natural disasters and other calamities when such events have a negative impact on state child support program operations.

Through this proposed rule, ACF will have the authority to modify the requirements for states to meet the following performance standards: the Paternity Establishment Percentage (PEP) performance standard of 90 percent under 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections performance standard of 35 percent under 45 CFR 305.40(a)(3). ACF may adjust these performance standards to a lower level to avoid imposing financial penalties on states and may also modify the requirements to avoid the imposition of penalties due to adverse data reliability audit findings. This would provide ACF with the flexibility to modify the performance requirements for a time-limited period during, and subsequent to, natural disasters and other calamities.

The need for rulemaking under the discretionary authority provided to the Secretary to modify performance penalty requirements became apparent during the COVID–19 pandemic. Due to disruptions to state child support program operations and to court operations during the COVID–19 pandemic, states experienced significant workload burdens and service backlogs. Since the start of the pandemic in early 2020, states have appealed for relief from program requirements in order to support their operations during the crisis. OCSS is able to provide certain flexibilities for administrative requirements under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) (See OCSS Dear Colleague Letter 20–04: Flexibilities for State and Tribal Child Support Agencies during COVID–19 Pandemic [1]). However, these flexibilities do not extend to relief for financial penalties related to performance or adverse data reliability audit findings. States are concerned that performance-related financial penalties, which are imposed in the form of a reduction to state TANF grants, place an undue burden on state budgets and threaten funding that supports the very families who are most in need during a time of crisis.

To address penalty relief due to the impact of the COVID–19 pandemic, ACF issued a final rule (87 FR 32090) on May 27, 2022, which provides states relief from performance penalties by modifying the PEP performance requirement from 90 percent to 50 percent for fiscal years 2020, 2021, and 2022. While the COVID–19 relief rulemaking was expedited due to the emergency created by the pandemic, the rulemaking effort required over 200 days from the time the NPRM was published in 2021 until the final rule was published in 2022. Due to the time required to accomplish rulemaking, ACF seeks the authority to provide relief in similar circumstances through a more streamlined approach, not requiring additional rulemaking during each event.

Without this NPRM, there is no general authority in title IV–D (or in other statutory authority) to relieve states from these penalties similar to the flexibility provided to the TANF program. The TANF program's authority to promulgate such a regulation derives from the TANF program statute (42 U.S.C. 609(b)). Without statutory authority providing such flexibility to the Secretary regarding IV–D requirements, it is not possible to issue a regulation similar to 45 CFR 262.5 for relief from title IV–D penalties.

This proposed regulation seeks to provide ACF ongoing authority to grant time-limited, targeted flexibilities, allowing ACF to provide timely relief to states when natural disasters or other calamities significantly affect program operations without having to engage in separate rulemaking, and will apply to Federal fiscal year periods subsequent to September 30, 2022. This relief would support states who might otherwise face penalties for not meeting specific performance measure standards or which may fail the data reliability audits.

Background: State Child Support Program Performance Requirements

Under Title IV–D of the Act, states are required to achieve performance levels in paternity establishment, support order establishment, and current support collections. Failure to achieve required performance levels may lead to penalties assessed as a percentage against the state's TANF grant.

The PEP, support order establishment, and current collections performance measures, which are part of the overall performance, audit, penalties, and incentives for the child support program, are established under 452(g) of the Act and 45 CFR 305.40. Section 452(a)(4)(C)(i) of the Act requires the Secretary to determine whether state-reported data used to determine the performance levels are complete and reliable. Additionally, section 409(a)(8)(A) of the Act and 45 CFR 305.61(a)(1) include the assessment of a financial penalty if there is a failure to achieve the required level of performance or an audit determines that the data is incomplete or unreliable.

The required levels of performance for the PEP, support order establishment, and current collections performance measures are set out in 45 CFR 305.40:

- The PEP performance level must be at least 90 percent or an improvement of 2 to 6 percentage points over the previous year's level of performance, below which a state will incur a penalty.
- The support order establishment performance level must be at least 40 percent, below which a state will be penalized unless an increase of 5 percent over the previous year is achieved.
- The current collections performance level must be at least 35 percent, below which a state will be penalized unless an increase of 5 percent over the previous year is achieved.

Section 409(a)(8)(A)(ii) of the Act and 45 CFR 305.61(a)(2) impose automatic corrective action for the subsequent fiscal year. A state also must submit complete and reliable data used in the performance measure calculations, which will be audited according to 45 CFR 305.60.

If a state fails to meet the annual performance measure standards, or to show improvement in the subsequent year (2 to 6 percentage points for the PEP), the amount of the initial penalty will be equal to one to two percent of the adjusted State Family Assistance Grant for the state's TANF program in accordance with 45 CFR 305.61(c) and (d). A penalty against the state's TANF grant will also be imposed if the state fails to submit complete and reliable performance measure data and there is an adverse data reliability audit finding for a performance measure in the subsequent year. The penalty will continue to be assessed in accordance with section 409(a)(8)(B) of the Act and 45 CFR 305.61 until the state is determined to have submitted complete and reliable data and achieved the required performance measure standards. In accordance with 45 CFR 262.1(e)(1), the state must expend additional state funds equal to the amount of the penalty (which will not count toward the maintenance-of-effort requirement under TANF) the year after the TANF grant penalty is assessed.

[1] *https://www.acf.hhs.gov/css/policy-guidance/flexibilities-state-and-tribal-child-support-agencies-during-covid-19-pandemic.*

Section-by-Section Discussion of the Provisions of This Proposed Rule

Section 305.61: Penalty for Failure To Meet IV–D Requirements

We propose to add a new provision to Part 305 (Program Performance Measures, Standards, Financial Incentives, and Penalties), to provide the Secretary with the authority to provide short-term relief from performance requirements related to the PEP, support order establishment, and current collections performance standards, when states are unable to meet those requirements due to the impact of natural disasters or other calamities on state child support program operations. We propose adding a new paragraph (f) to § 305.61, Penalty for failure to meet IV–D requirements, to provide the Secretary with the authority, during and subsequent to natural disasters and other calamities, to temporarily modify the performance requirements for states to meet the paternity establishment percentage standard of 90 percent under 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections standard of 35 percent under 45 CFR 305.40(a)(3), to a lower level to avoid imposing the financial penalty on states. The proposed rule would also authorize the Secretary to set aside adverse data reliability audit findings under section 452(g) of the Act during the same time period.

The proposed rule would require individual states and territories to initiate the request to modify the performance requirements specified under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), or under 45 CFR 305.40(a)(3) when a state has experienced a natural disaster or other calamity that has or will make compliance with the performance standards impracticable. The state may also ask the Secretary to set aside adverse data reliability audit findings under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.61(a)(1)(ii) for the same time period as the time period for which a modification of performance requirements is sought.

A natural disaster or other calamity includes state chief executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), and declared public health emergencies under section 319 of the Public Health Service Act (42 U.S.C. 247d). The state's chief executive (or his or her designee, this title is illustrative only and reflects the position determined by the state which holds this authority) must demonstrate, based on available data, that such emergency has made the state's ability to attain one or more of the performance standards impracticable. The request for relief must include a narrative statement which describes both the circumstances and justification for the request. The statement should also provide information substantiating the impracticability of compliance with the standards, including a description of the specific conditions caused by the natural disaster or other calamity, including preliminary data provided by the state, as required under 45 CFR 305.32(f), showing reduced performance.

The request must also include information on the expected duration of the conditions that make compliance impracticable and include any other documentation or other information that the Secretary may require to make a determination regarding relief.

The state must demonstrate to the satisfaction of the Secretary that the natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance, based on data provided by the state.

The statement and other documentation must demonstrate that the state: has not or will not meet one or more existing performance requirements, such that a performance penalty would apply; has submitted preliminary data to support the statement; and has provided all required information. Any additional information must be submitted as soon as the adverse effect of the natural disaster or other calamity giving rise to the request is known to the state.

The Secretary will make a determination of the modified performance requirements based on preliminary data provided by the state under 45 CFR 305.32(f) and shall provide written communication to the state of the decision and the period for which any modified standards shall apply. Relief from the performance requirements will be time-limited, based on the data presented by the state, and the Federal fiscal year period in which conditions are expected to make compliance impracticable.

We propose providing the Secretary with the authority to provide temporary relief to align with the Federal fiscal year timeframes which align with the expected duration of the conditions that make compliance with the performance requirement impracticable. After the relief period, the performance requirements will revert back to the levels described under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), or under 45 CFR 305.40(a)(3), and the state will once again be subject to penalties for adverse data reliability audit findings related to the performance measures after an automatic corrective action year as specified in 45 CFR 305.42. This proposed rule will apply to Federal fiscal year periods subsequent to September 30, 2022.

Paperwork Reduction Act

No new information collection requirements would be imposed by this proposed regulation.

Regulatory Impact Analysis

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, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant, during a time when public assistance funds are critically needed.

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this NPRM is significant and was accordingly reviewed by OMB.

Regulatory Flexibility Analysis

The Secretary proposes to certify that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this proposed rule, if finalized, will not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $177 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will exceed this threshold in any year.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because this regulation does not impose requirements on states or families and thus will not have any impact on family well-being.

Executive Order 13132

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 13132.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on March 15, 2023.

List of Subjects in 45 CFR Part 305

Child support, Program performance measures, standards, financial incentives, and penalties.

Dated: July 6, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 305 as set forth below:

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

■ 2. Amend § 305.61 by adding new paragraph (f) to read as follows:

§ 305.61 Penalty for failure to meet IV–D requirements.

* * * * *

(f) *Authority to modify state requirements to meet paternity establishment percentages, support order establishment, or current collections performance measure standards during natural disasters and other calamities.* During, and subsequent to, natural disasters and other calamities (*e.g.,* state chief executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), and declared public health emergencies under section 319 of the Public Health Service Act, 42 U.S.C. 247d), the Secretary may temporarily modify the performance measure requirements for a state to meet the paternity establishment percentage standard of 90 percent under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections standard of 35 percent under 45 CFR 305.40(a)(3), to lower levels to avoid imposing financial performance penalties on states, and may set aside adverse data reliability audit findings under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.61(a)(1)(ii) during the same time period.

For Federal fiscal years subsequent to September 30, 2022, the performance requirements for paternity establishment under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), for support order establishment under 45 CFR 305.40(a)(2), and for current collections under 45 CFR 305.40(a)(3)—may be modified by the Secretary to a lower level under the conditions described in this section.

(1) If a state experiences a natural disaster or other calamity (*e.g.,* state chief executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), and declared public health emergencies under section 319 of the Public Health Service Act, 42 U.S.C. 247d), the state's chief executive officer (or his or her designee) may submit to the Secretary a request to modify one or more of the performance requirements specified under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), or under 45 CFR 305.40(a)(3).

(2) The state may also ask the Secretary to set aside adverse data reliability audit findings under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.61(a)(1)(ii) for the same time period as the time period for which a modification of performance requirements is sought.

(3) The request for a modification to the performance requirements must be submitted in accordance with the procedures specified in paragraphs (f)(4), (5) and (6) of this section. Any request other than one submitted with the initial application must be submitted as soon as the adverse effect of the natural disaster or other calamity giving rise to the request is known to the state.

(4) A request for a modification of one or more of the performance requirements must include the following:

(i) A narrative statement describing the circumstances and justification for the request to modify the state's performance requirement;

(ii) Information substantiating the impracticability of compliance with the standards, including a description of the specific conditions caused by the natural disaster or other calamity which make compliance impracticable, including preliminary data provided by the state, as required under 45 CFR 305.32(f), showing reduced performance;

(iii) Information on the expected duration of the conditions that make compliance impracticable; and

(iv) Any other documentation or other information that the Secretary may require to make this determination.

(5) The state must demonstrate to the satisfaction of the Secretary that the natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance, based on data provided by the state. In its request for a temporary modification to one or more performance requirements, the state must be able to demonstrate that it:

(i) Has not or will not meet one or more existing performance requirements, such that a performance penalty would apply;

(ii) Has submitted preliminary data supporting this statement; and

(iii) Has provided all required information requested by the Secretary.

(6) The Secretary shall provide written communication of the decision to modify or decline to modify the performance standards, and the period for which any modified standards shall apply, after receipt of appropriate written communication from the chief executive officer.

(i) If approved, a temporary modification in a performance requirement will expire on the last day of the Federal fiscal year for which it was approved.

(ii) Adverse findings of data reliability audits of the state's performance data under 45 CFR 305.60 as reported during the period in which the performance requirement modification is approved will not result in a financial penalty pursuant to the state's request as specified in paragraph (f)(2) of this section.

(iii) Unless the state receives a written approval of its performance requirement modification request, the performance requirements under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), and under 45 CFR 305.40(a)(3) remain in effect.

(iv) If the request for a performance requirement modification is denied, the denial is not subject to administrative appeal.

[FR Doc. 2023–14658 Filed 7–12–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230706–0161]

RIN 0648–BM27

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Amendment 53

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 53 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). For gag, this proposed rule would revise the sector annual catch limits (ACLs), commercial trip limits, recreational bag, vessel, and possession limits, and recreational accountability measures (AMs). For black grouper, this proposed rule would revise the recreational bag, vessel, and possession limits. In addition, Amendment 53 would establish a rebuilding plan, and revise the overfishing levels, acceptable biological catch (ABC), annual optimum yield (OY), and sector allocations for gag. The purpose of this proposed rule and Amendment 53 is to end overfishing of gag, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

DATES: Written comments must be received on or before August 14, 2023.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2023–0045,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2023–0045'', in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 53, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-53-rebuilding-plan-gag-and-management-gag-and-black-grouper/.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727–824–5305, or email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery, which includes gag and black grouper, is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

All weights described in this proposed rule are in gutted weight, unless otherwise specified.

In 2006, the gag stock was assessed through the Southeast Data, Assessment, and Review (SEDAR) process as a benchmark assessment (SEDAR 10). The assessment indicated that the gag stock was not overfished but was undergoing overfishing. The Council and NMFS implemented management measures, including implementing a spawning season closure to end overfishing through the final rule for Amendment 16 to the FMP (74 FR 30964, July 29, 2009).

In 2014, the gag stock was assessed again through the SEDAR 10 Update as a standard assessment. The assessment indicated that the gag stock was not overfished but was still experiencing overfishing. However, the Council's Scientific and Statistical Committee (SSC) noted that the fishing mortality rate for 2012, and the projected fishing mortality rate in 2013, based on the actual landings, suggested that overfishing did not occur in 2012 and 2013. Consequently, NMFS determined that the gag stock was not undergoing overfishing. In response to the SEDAR 10 Update, the Council and NMFS modified the ACLs and management measures through the final rule for Regulatory Amendment 22 to the FMP (80 FR 48277, August 12, 2015).

Amendment 53 responds to the most recent stock assessment for South Atlantic gag (SEDAR 71 2021). The Council's SSC reviewed the gag stock

assessment (SEDAR 71 2021) at their June 2021 meeting. The assessment followed a standard approach using data through 2019, and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES). The findings of the assessment indicated that the South Atlantic gag stock is overfished and undergoing overfishing. The SSC found that the assessment was conducted using the best scientific information available, was adequate for determining stock status and supporting total fishing level recommendations. NMFS notified the Council of the updated status of the gag stock via letter dated July 23, 2021.

Following a notification from NMFS to a Council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the Council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. The Council developed Amendment 53 to respond to the results of SEDAR 71.

The Council requested several different rebuilding projections for the gag stock including a 50 percent and a 70 percent probability of rebuilding under recent low recruitment and longer-term modeled recruitment scenarios. The SSC recommended ABC values based on a 70 percent probability of rebuilding in 10 years and recruitment based on the long-term recruitment scenario from SEDAR 71. However, in March 2023, the NMFS Southeast Fisheries Science Center advised the Council that unless gag discards were reduced in similar proportion to the reduction in landings, the probability of rebuilding would be below the expected 70 percent probability of rebuilding but still be above 50 percent, as required under the Magnuson-Stevens Act. The Council accepted the SSC's recommended ABC values, as discussed below.

In Amendment 53, the Council would also revise the overfishing limit (OFL) for gag, and update other biological reference points. Amendment 53 would set the OFL to 367,235 lb (166,575 kg), for 2023; 494,338 lb (224,228 kg), for 2024; 605,227 lb (274,526 kg), for 2025; 706,366 lb (320,402 kg), for 2026; 808,266 lb (366,623 kg), for 2027; 912,033 lb (413,691 kg), for 2028; 1,011,133 lb (458,642 kg), for 2029; 1,098,379 lb (498,216 kg), for 2030; 1,171,120 lb (531,211 kg), for 2031; and 1,230,363 lb (558,083 kg), for 2032 and subsequent fishing years.

The Council intends that Amendment 53 would end overfishing of South Atlantic gag, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the sector ACLs, commercial trip limits, recreational bag, vessel, and possession limits, and recreational AMs for gag. Because gag and black grouper are often misidentified by recreational fishermen, this proposed rule would also address recreational vessel limits and a prohibition on captain and crew bag limit retention for black grouper.

Total ACLs

Through the final rule for Regulatory Amendment 22 to the FMP, the current total ACL and annual OY were set at 734,350 lb (333,095 kg), which is 95 percent of the current ABC (80 FR 48277, August 12, 2015). In Amendment 53, the Council would revise the ABC based on SEDAR 71 and the recommendation of the SSC, and set the ABC, ACL, and annual OY equal to each other.

This proposed rule would revise the total ACL (and the annual OY) equal to the recommended ABC of 175,632 lb (79,665 kg), for 2023; 261,171 lb (118,465 kg), for 2024; 348,352 lb (158,010 kg), for 2025; 435,081 lb (197,349 kg), for 2026; 524,625 lb (237,966 kg), for 2027; 617,778 lb (280,219 kg), for 2028; 711,419 lb (322,694 kg), for 2029; 800,088 lb (362,914 kg), for 2030; 879,758 lb (399,052 kg), for 2031; and 948,911 lb (430,419 kg), for 2032 and subsequent fishing years.

Sector Allocations and ACLs

Amendment 53 would revise the commercial and recreational allocations for gag. The current sector ACLs for gag are based on the commercial and recreational allocations of the total ACL at 51 percent and 49 percent, respectively, that were established through Amendment 16 to the FMP (74 FR 30964, July 29, 2009). The Council used the distribution of landings from 1999 through 2003 to determine the existing allocations.

In Amendment 53, the Council would adjust the commercial and recreational sector allocations based on a unique allocation formula (''split reduction method'') that also accounts for the revisions to the calibrated recreational landings estimates from the MRIP FES. This method would implement the reductions in total harvest needed to achieve the new total ACL proportionally for each sector, based upon the distribution of landings under more recent time periods that the Council determined better reflect the way the fishery is currently operating. The Council chose the 5-year average of commercial and recreational (FES) landings from 2015 through 2019, and split the reduction needed to achieve the new reduced ACL in 2023 proportionally among the sectors. Then in each subsequent year throughout the rebuilding plan, as the ACL increases, the ACL poundage increase is allocated equally between both sectors and added to each sector's respective ACL from the previous year. The proposed adjustments would result in allocation percentages of 49 percent commercial and 51 percent recreational for 2023 through 2026. Each year thereafter would be a 50 percent commercial and 50 percent recreational allocation.

The Council determined that the preferred sector allocation method in Amendment 53 more fairly deals with the initial reduction in landings that results from the updated catch levels, and reduces the proportion of each sector's allowable catch based on recent landings so that the effect on each sector is more equitable. Similarly, the Council noted that the new allocations would achieve a balance between the needs of both sectors and also increase each sector's allowable catch proportionately on a poundage basis throughout the rebuilding plan. The Council determined that the new method distributes both overfishing restrictions and recovery benefits for gag fairly and equitably among both sectors. Thus, the Council considers this allocation method to be fair and equitable to fishery participants in both the commercial and recreational sectors. In addition, this allocation method is also reasonably calculated to promote conservation, since it achieves OY while it remains within the boundaries of a total ACL that is based upon an ABC recommendation that would end overfishing and rebuild the stock, incorporating the best scientific information available.

The current commercial ACL for gag is 347,301 lb (157,533 kg) and was implemented through Amendment 16 to the FMP (74 FR 30964, July 29, 2009). The commercial ACLs in this proposed rule would be 85,326 lb (38,703 kg), for 2023; 128,096 (58,103 kg), for 2024; 171,687 (77,876 kg), for 2025; 215,051 (97,545 kg), for 2026; 259,823 (117,854 kg), for 2027; 306,400 (138,981 kg), for 2028; 353,220 (160,218 kg), for 2029; 397,555 (180,328 kg), for 2030; 437,390 (198,397 kg), for 2031; and 471,966 lb (214,080 kg), for 2032 and subsequent years.

The current recreational ACL for gag is 359,832 lb (172,807 kg) and was implemented through Amendment 16 to the FMP (74 FR 30964, July 29, 2009). The recreational ACLs in this proposed rule would be 90,306 lb (40,962 kg), for 2023; 133,075 lb (60,362 kg), for 2024; 176,665 lb (80,134 kg), for 2025; 220,030 lb (99,804 kg), for 2026; 264,802 lb (120,112 kg), for 2027; 311,378 lb (141,239 kg), for 2028; 358,199 lb (162,476 kg), for 2029; 402,533 (182,586 kg), for 2030; 442,368 lb (200,655 kg), for 2031; and 476,945 lb (216,339 kg), for 2032 and subsequent years.

Commercial Trip Limits

The final rule for Regulatory Amendment 14 to the FMP established the current commercial trip limit for gag of 1,000 lb (454 kg), until 75 percent of the commercial quota is met, at which time the commercial trip limit is reduced to 500 lb (227 kg) for the remainder of the fishing year or until the commercial quota is met (79 FR 66316, December 8, 2014). This proposed rule would modify the commercial trip limit for gag to be 300 lb (136 kg), without a trip limit reduction.

Under the proposed trip limit, the Council determined that commercial fishermen could retain a sufficient amount of gag over the longest amount of time during a fishing year, and that it would increase the likelihood of gag remaining open to commercial harvest and available to consumers for as long as possible during the year.

Recreational Vessel Limits for Gag and Black Grouper

This proposed rule would establish a private recreational vessel limit for gag and also a private recreational vessel limit for black grouper of two fish per vessel per day, not to exceed the daily bag limit of one fish per person per day, whichever is more restrictive. For for-hire recreational vessels, this proposed rule would establish a vessel limit for gag and also a vessel limit for black grouper of two fish per vessel per trip, not to exceed the daily bag limit of one fish per person per day, whichever is more restrictive.

There is currently no recreational vessel limit for gag or black grouper. The current recreational bag and possession limits for gag and black grouper in the South Atlantic, specified by Regulatory Amendment 22 to the FMP, are one fish per person per day within the three fish aggregate for grouper and tilefish, and no more than one of those fish may be a gag or a black grouper.

Given the substantial reduction in harvest needed to end overfishing immediately and to increase the likelihood of rebuilding the gag stock, the Council decided to establish recreational vessel limits for gag that would continue to allow recreational retention and help constrain harvest to the reduced recreational ACL. As previously mentioned, gag and black grouper are often misidentified by recreational fishermen. Because of these misidentification issues between the two species, coupled with the need to greatly reduce the harvest of gag to end overfishing and rebuild the stock, this proposed rule would also implement recreational vessel limits to help with harvest constraints for black grouper to indirectly benefit the gag portion of the snapper-grouper fishery.

This proposed rule would not alter the gag or black grouper recreational bag limits, which would remain one gag or one black grouper per person per day within the three fish aggregate for grouper and tilefish. This proposed rule would establish a per day gag and black grouper recreational vessel limit for the private angling component and a per trip gag and black grouper vessel limit for the charter vessel and headboat (for-hire) component. These separate vessel limits would be expected to constrain harvest for these two separate components of the recreational sector. Because for-hire vessels may take multiple trips in a single day, the Council determined that a per trip maximum vessel limit would ensure equal access for new customers on a second for-hire trip of the day by not requiring discarding of a gag or black grouper if one was previously caught and kept by a different customer on the first trip of a day.

Prohibition of Captain and Crew Bag Limit Retention for Gag and Black Grouper

The captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit may currently retain the daily bag limit of gag or black grouper as is allowed for each for-hire passenger. This proposed rule would set the gag and black grouper bag limit for captain and crew on a for-hire vessel with a Federal for-hire snapper-grouper permit at zero. The Council determined that because of the need to constrain the harvest of gag to the reduced recreational catch levels and because of the misidentification issues previously discussed, continuing to allow captain and crew to retain a daily bag limit of gag or black grouper would increase the potential gag harvest by recreational for-hire anglers and would prevent necessary reductions in the harvest of gag from being achieved.

Recreational AMs

The current recreational AMs for gag were established through Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The AM includes an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL, regardless of whether the stock is overfished. The recreational AM also includes post-season adjustments. If recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. Also, if the total ACL is exceeded and gag are overfished, the length of the recreational fishing season and the recreational ACL are reduced by the amount of the recreational ACL overage.

This proposed rule would revise the recreational AMs for gag. The current in-season closure AM would be retained and the post-season recreational AM would be revised. If recreational landings for gag exceed the recreational ACL, the length of the following year's recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being exceeded. The proposed AM would remove the current potential duplicate AM application of a reduction in the recreational season length and an overage adjustment (payback) of the recreational ACL overage if the total ACL was exceeded. Under this proposed measure, the AM trigger would not be tied to the total ACL, but only to the recreational ACL. The proposed AM modification would ensure that overages in the recreational sector do not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the recreational AM being implemented would apply to the recreational fishing season following the year of a recreational ACL overage. Additionally, under the proposed recreational AM, the length of the recreational season would not be reduced if the Regional Administrator determines, using the best scientific information available, that such is reduction is unnecessary. This proposed rule would not revise the commercial AMs because the Council determined that the current commercial AM remains sufficient to ensure commercial landings would not exceed either the current or revised commercial ACL.

Management Measures in Amendment 53 Not Codified by This Proposed Rule

In addition to the measures within this proposed rule, Amendment 53 would revise the OFL for gag and update other biological reference points. Amendment 53 would also establish a rebuilding plan, and revise the ABC, the OY, and the sector allocations for gag.

Rebuilding Plan for the South Atlantic Gag Stock

Amendment 53 would establish a 10-year rebuilding plan, which is the longest allowable rebuilding scenario (Tmax) allowed for the gag stock by the Magnuson-Stevens Act (16 U.S.C. 1854(e)(4)(A)). In addition, the Magnuson-Stevens Act National Standard 1 Guidelines state that if the stock is projected to rebuild in 10 years or less, then Tmax is 10 years (50 CFR 600.310(j)(3)(i)(B)(1)). The Council intends that their preferred choice of the 10-year timeframe for rebuilding in Amendment 53 beginning in 2023 would reduce the severity of the management measures and thus result in fewer short-term negative social and economic impacts on fishing communities.

ABC and Annual OY

The current OFL of 825,000 lb (374,214 kg) and ABC of 773,000 lb (350,627 kg) are inclusive of Coastal Household Telephone Survey (CHTS) estimates of private recreational and charter landings. The Council's SSC reviewed the latest stock assessment (SEDAR 71) and recommended new ABC levels as determined by SEDAR 71. The assessment and associated ABC recommendations incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and the updated FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the CHTS with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 53, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and is more robust compared to the MRIP CHTS method. The new ABC recommendations within Amendment 53 also represent the best scientific information available as determined by the SSC.

The Council chose to specify OY for gag on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 53, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 603). NMFS has determined that this IRFA is consistent with RFA requirements, subject to further consideration after public comment. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This proposed rule, if implemented, would: (1) revise the gag total ACL and sector ACLs, (2) reduce the commercial trip limit for gag, (3) revise the gag recreational bag, vessel, and possession limits, (4) revise the gag recreational AMs, and (5) for black grouper revise the recreational bag, vessel, and possession limits. Item (1), the gag total ACL and sector ACLs, would apply to all federally-permitted commercial vessels, federally-permitted charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest gag in federal waters of the South Atlantic. Item (2), the commercial trip limit for gag, would only apply to commercial vessels. Items (3), gag recreational bag, vessel, and possession limits; (4), gag recreational AMs; and (5), black grouper recreational bag, vessel, and possession limits, would only apply to for-hire vessels and recreational anglers. None of the proposed changes would directly apply to federally-permitted dealers. Any change in the supply of gag available for purchase by dealers as a result of this proposed rule, and associated economic effects, would be an indirect effect of the proposed regulatory action and would therefore fall outside the scope of the RFA.

Although most provisions of this proposed rule would apply to for-hire vessels, they would not be expected to have any direct effects on these entities. For-hire vessels sell fishing services to recreational anglers. The proposed changes to the gag catch limits and gag and black grouper management measures would not be expected to directly alter the services sold by these vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this proposed rule would be a consequence of a change in anglers' behavior, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Based on the historically-minimal level of charter mode target effort for gag and black grouper in the South Atlantic, the low retention limit for these species, and the number of substitute species available, NMFS does not expect any change in for-hire trip demand to result from this proposed rule; however, should it occur, any such indirect effects would fall outside the scope of the RFA. For-hire captains and crew are currently allowed to retain gag and black grouper under the recreational bag limits; however, they are not allowed to sell these fish. As such, for-hire captains and crew are only affected as recreational anglers. The RFA does not consider recreational anglers to be entities, so they are also outside the scope of this analysis (5 U.S.C. 603). Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)–(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on commercial vessels will be discussed.

As of August 26, 2021, there were 579 valid or renewable South Atlantic Snapper-Grouper unlimited permits and 112 valid or renewable 225-lb (102.1 kg) trip-limited permits. On average from 2015 through 2019, there were 203 federally-permitted commercial vessels with reported landings of gag in the South Atlantic. Their average annual vessel-level gross revenue from all species for 2015 through 2019 was $67,722 (2021 dollars) and gag accounted for approximately 10 percent of this revenue. For commercial vessels

that harvest gag in the South Atlantic, NMFS estimates that economic profits are $677 (2021 dollars) or 1 percent of annual gross revenue, on average. The maximum annual revenue from all species reported by a single one of the vessels that harvested gag from 2015 through 2019 was $638,709 (2021 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would revise the gag total ACLs based on the most recent recommendation from the SSC in response to the SEDAR 71 (2021) gag stock assessment. These catch limits would reflect a shift in recreational reporting units from the MRIP CHTS to the MRIP FES. The total ACL would be set equal to the ABC in each year of the rebuilding plan according to the values provided in Table 1. The 2032 total ACL values would remain in effect until changed by future Council action. Relative to the current commercial ACL of 347,301 lb (157,533 kg) and applying the current commercial sector allocation of 51 percent, the proposed changes to the gag catch limits would result in a decrease in the commercial ACL during 2023 and through 2028 and an increase thereafter, as shown in Table 1. However, as discussed below, this proposed rule would also modify the percentage of the total ACL that is allocated to the commercial sector, and therefore, estimated economic effects to small entities are considered as part of that discussion below.

TABLE 1—PROPOSED TOTAL ACLS AND COMMERCIAL ACLS, AS BASED ON CURRENT ALLOCATION PERCENTAGES

Year	Total ACL in lb (kg)	Commercial ACL in lb (kg)	Difference between proposed and current commercial ACL in lb (kg)
2023	175,632 (79,665)	89,572 (40,629)	−257,729 (−116,904)
2024	261,171 (118,465)	133,197 (60,417)	−214,104 (−97,116)
2025	348,352 (158,010)	177,660 (80,585)	−169,641 (−76,948)
2026	435,081 (197,349)	221,891 (100,648)	−125,410 (−56,885)
2027	524,625 (237,966)	267,559 (121,363)	−79,742 (−36,170)
2028	617,778 (280,219)	315,067 (142,912)	−32,234 (−14,621)
2029	711,419 (322,694)	362,824 (164,574)	15,523 (7,041)
2030	800,088 (362,914)	408,045 (185,086)	60,744 (27,553)
2031	879,758 (399,052)	448,677 (203,516)	101,376 (45,983)
2032+	948,911 (430,419)	483,945 (219,514)	136,644 (61,981)

This proposed rule would set gag sector allocations and sector ACLs in 2023 proportional to each sector's share of total average landings (commercial and recreational combined) from 2015 through 2019. In subsequent years, as the total ACL increases, the total ACL poundage increase would be split equally between both sectors and added to each sector's ACL from the previous year. As a result, the allocation percentages would gradually shift over time. The 2032 values would remain in effect unless changed by future management action. As shown in Table 2, the combined economic effects of the proposed total ACLs in conjunction with the proposed revisions to the commercial allocation and ACLs, are estimated to be negative from 2023 through 2028 and positive thereafter. These estimates assume the full commercial ACL is harvested each year. Dividing the change in economic profits for each year shown in Table 2 by the average number of vessels with reported landings of gag from 2015 through 2019, the estimated annual change in economic profits per vessel would range from −$84 (a 12 percent loss per vessel) in 2023 (2021 dollars) to $40 (a 6 percent increase per vessel) in 2032. These estimated economic effects would be changing over time, and the time value of money concept suggests money earned sooner is more valuable than money earned later because of its earning potential. Therefore, when calculating an average annual effect, it is important to discount the future stream of benefits and costs back to present time to account for an assumed rate of return on capital. The net present value (NPV) of the estimated stream of changes in ex-vessel revenue over a 10 year period (2023 through 2032), using a 3 percent discount rate, is −$4.2 million (2021 dollars) and the annualized NPV during that period would be −$490,415. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel would be −$2,416 and −$24, respectively. Individual fishing businesses, however, may experience varying levels of economic effects, depending on their fishing practices, operating characteristics, and profit maximization strategies.

TABLE 2—PROPOSED COMMERCIAL ALLOCATION, WITH CHANGES IN COMMERCIAL ACL, EX-VESSEL REVENUE, AND ECONOMIC PROFITS RELATIVE TO THE STATUS QUO COMMERCIAL ACL OF 347,301 LB (157,533 KG)

Year	Commercial allocation	Commercial ACL in lb (kg)	Change in lb (kg) relative to no action	Change in ex-vessel revenue relative to no action (2021 dollars)	Change in economic profits (2021 dollars)
2023	0.49	85,326 (38,703)	−261,975 (−118,830)	−$1,705,457	−$17,055
2024	0.49	128,096 (58,103)	−219,205 (−99,430)	−1,427,025	−14,270
2025	0.49	171,687 (77,876)	−175,614 (−79,657)	−1,143,247	−11,432
2026	0.49	215,051 (97,545)	−132,250 (−59,988)	−860,948	−8,609
2027	0.50	259,823 (117,854)	−87,478 (−39,679)	−569,482	−5,695
2028	0.50	306,400 (138,981)	−40,901 (−18,552)	−266,266	−2,663
2029	0.50	353,220 (160,218)	5,919 (2,685)	38,533	385
2030	0.50	397,555 (180,328)	50,254 (22,795)	327,154	3,272
2031	0.50	437,390 (198,397)	90,089 (40,864)	586,479	5,865
2032+	0.50	471,966 (214,080)	124,665 (56,547)	811,569	8,116

In addition to the changes mentioned above, this proposed rule would reduce the gag commercial trip limit to 300 lb (136 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 20 percent or 46,333 lb (21,016 kg) per year. This reduction in landings would represent an estimated annual loss of $301,630 (2021 dollars) in ex-vessel revenue and $3,016 in economic profits to the commercial sector. However, the trip limit would be modified in conjunction with the revised commercial ACL (Table 2) and NMFS expects the commercial sector to fully harvest the revised commercial ACL, even with the reduced commercial trip limit, at least in the beginning years (2023–2025) of the rebuilding plan. Therefore, these economic effects would initially be subsumed under those described for the proposed ACLs and allocations (Table 2). In later years (2026–2032), the reduced trip limit may prevent the full harvest of the commercial ACL, thereby reducing the economic benefits associated with the increasing ACLs; however, landings rates for later years are more uncertain. In general, reducing the commercial trip limit, even if aggregate landings remain the same, may reduce the economic efficiency of individual trips which, in turn, may have negative consequences on economic profits. These effects cannot be quantified with existing data.

Three alternatives were considered for the action to revise the ABC, based on the SSC's latest recommendations, and set the total ACL and annual OY equal to it. The first alternative, the no action alternative, would retain the existing ABC of 773,000 lb (350,627 kg). Under this alternative, the total ACL and annual OY would remain equivalent to 95 percent of the current ABC or 734,350 lb (333,096 kg). Because no changes would be made to the current catch limits, the first alternative would not be expected to change fishing practices or commercial harvests of gag, nor would it be expected to result in direct economic effects. This alternative was not selected by the Council because it would be inconsistent with their SSCs' latest catch limit recommendations and the transition to the MRIP FES, and therefore, would not be based on the best scientific information available.

The second alternative to the proposed action to revise the ABC, ACL and annual OY would adopt the revised ABCs recommended by the SSC; however, it would set both the total ACL and annual OY equal to 95 percent of the ABC. The change in pounds between the total and commercial ACLs under this alternative relative to the proposed action, along with the expected change in ex-vessel revenue are provided in Table 3. Relative to the proposed total ACLs and assuming no change to the current sector allocations, this alternative would reduce the commercial ACL by a range of 4,479 lb (2,032 kg) in 2023 to 24,197 lb (10,976 kg) in 2032 and subsequent years (Table 3). Assuming the commercial ACL would be harvested in full under either the proposed action or the second alternative, this translates to a loss in ex-vessel revenue of $29,156 to $157,524 (2021 dollars) and a loss in economic profits equal to 1 percent of that or $292 to $1,575. The NPV of the estimated stream of changes in ex-vessel revenue over a 10 year period (2023 through 2032) relative to the proposed commercial ACLs, using a 3 percent discount rate, is −$777,295 (2021 dollars) and the annualized NPV during that period would be −$91,123. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) would be −$449 and −$4, respectively. The Council did not select the second alternative because they determined it would be less effective at achieving the objectives of the FMP and that the current ACL monitoring mechanisms in the South Atlantic, coupled with the existing and proposed management measures, would be sufficient at preventing overages, thus not requiring a buffer between the ABC and total ACL.

TABLE 3—DIFFERENCES IN TOTAL ACL, COMMERCIAL ACL, AND EX-VESSEL REVENUE UNDER THE SECOND ALTERNATIVE TO THE PROPOSED ACTION TO REVISE THE ABC, ACL, AND ANNUAL OY

Year	Proposed total ACL in lb (kg)	Total ACL under alternative 2 in lb (kg)	Difference in total ACL in lb (kg)	Difference in commercial ACL in lb (kg) using current allocation of 51 percent	Change in potential ex-vessel revenue (2021 dollars)
2023	175,632 (79,665)	166,850 (75,682)	−8,782 (−3,983)	−4,479 (−2,032)	−$29,156
2024	261,171 (118,465)	248,112 (112,542)	−13,059 (−5,923)	−6,660 (−3,021)	−43,356

TABLE 3—DIFFERENCES IN TOTAL ACL, COMMERCIAL ACL, AND EX-VESSEL REVENUE UNDER THE SECOND ALTERNATIVE TO THE PROPOSED ACTION TO REVISE THE ABC, ACL, AND ANNUAL OY—Continued

Year	Proposed total ACL in lb (kg)	Total ACL under alternative 2 in lb (kg)	Difference in total ACL in lb (kg)	Difference in commercial ACL in lb (kg) using current allocation of 51 percent	Change in potential ex-vessel revenue (2021 dollars)
2025	348,352 (158,010)	330,934 (150,109)	−17,418 (−7,901)	−8,883 (−4,029)	−57,828
2026	435,081 (197,349)	413,327 (187,482)	−21,754 (−9,867)	−11,095 (−5,033)	−72,226
2027	524,625 (237,966)	498,394 (226,068)	−26,231 (−11,898)	−13,378 (−6,068)	−87,090
2028	617,778 (280,219)	586,889 (266,208)	−30,889 (−14,011)	−15,753 (−7,145)	−102,554
2029	711,419 (322,694)	675,848 (306,559)	−35,571 (−16,135)	−18,141 (−8,229)	−118,099
2030	800,088 (362,914)	760,084 (344,768)	−40,004 (−18,146)	−20,402 (−9,254)	−132,819
2031	879,758 (399,052)	835,770 (379,099)	−43,988 (−19,953)	−22,434 (−10,176)	−146,044
2032+ ...	948,911 (430,419)	901,465 (408,898)	−47,446 (−21,521)	−24,197 (−10,976)	−157,524

The third alternative to the proposed action to revise the ABC, ACL and annual OY would adopt the revised ABCs recommended by the SSC; however, it would set both the total ACL and annual OY equal to 90 percent of the ABC. The change in pounds between the total and commercial ACLs under this alternative relative to the proposed action, along with the expected change in ex-vessel revenue are provided in Table 4. Relative to the proposed total ACLs and assuming no change to the current sector allocations, this alternative would reduce the commercial ACL by a range of 8,957 lb (4,063 kg) in 2023 to 48,394 lb (21,951 kg) in 2032 and subsequent years (Table 4). Assuming the commercial ACL would be harvested in full under either the proposed action or the third alternative, this translates to a loss in ex-vessel revenue of $58,312 to $315,048 (2021 dollars) and a loss in economic profits equal to 1 percent of that or $583 to $3,150. The NPV of the estimated stream of changes in ex-vessel revenue over a 10 year period (2023 through 2032) relative to the proposed commercial ACLs, using a 3 percent discount rate, is −$1.6 million (2021 dollars) and the annualized NPV during that period would be −$182,245. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) would be −$898 and −$9, respectively. The Council did not select the third alternative because they determined it would be less effective at achieving the objectives of the FMP and that the current monitoring mechanisms in the South Atlantic, coupled with the existing and proposed management measures, would be sufficient at preventing overages, thus not requiring a buffer between the ABC and total ACL.

TABLE 4—DIFFERENCES IN TOTAL ACL, COMMERCIAL ACL, AND EX-VESSEL REVENUE UNDER THE THIRD ALTERNATIVE TO THE PROPOSED ACTION TO REVISE THE ABC, ACL, AND ANNUAL OY

Year	Proposed total ACL in lb (kg)	Total ACL under Alternative 3 in lb (kg)	Difference in total ACL in lb (kg)	Difference in commercial ACL in lb (kg) using current allocation of 51 percent	Change in potential ex-vessel revenue (2021 dollars)
2023	175,632 (79,665)	158,069 (71,699)	−17,563 (−7,966)	−8,957 (−4,063)	−$58,312
2024	261,171 (118,465)	235,054 (106,619)	−26,117 (−11,846)	−13,320 (−6,042)	−86,711
2025	348,352 (158,010)	313,517 (142,209)	−34,835 (−15,801)	−17,766 (−8,059)	−115,656
2026	435,081 (197,349)	391,573 (177,615)	−43,508 (−19,735)	−22,189 (−10,065)	−144,451
2027	524,625 (237,966)	472,163 (214,170)	−52,463 (−23,797)	−26,756 (−12,136)	−174,181
2028	617,778 (280,219)	556,000 (252,197)	−61,778 (−28,022)	−31,507 (−14,291)	−205,108
2029	711,419 (322,694)	640,277 (290,425)	−71,142 (−32,269)	−36,282 (−16,457)	−236,198
2030	800,088 (362,914)	720,079 (326,622)	−80,009 (−36,291)	−40,804 (−18,508)	−265,637
2031	879,758 (399,052)	791,782 (359,146)	−87,976 (−39,905)	−44,868 (−20,352)	−292,088
2032+	948,911 (430,419)	854,020 (387,377)	−94,891 (−43,042)	−48,394 (−21,951)	−315,048

Four alternatives were considered for the proposed action to revise the gag sector allocations and sector ACLs. The first alternative, the no action alternative, would retain the current commercial and recreational sector allocations as 51 percent and 49 percent, respectively, of the revised total ACL for gag. Relative to the proposed allocation, this alternative, when applied to the proposed total ACLs in Table 1, would result in an increase in ex-vessel revenue that ranges from $27,641 ($136 per vessel) in 2023 to $77,983 ($384 per vessel) in 2032 (Table 5). The NPV of the estimated stream of changes in ex-vessel revenue over a 10 year period (2023 through 2032) relative to the proposed allocation, using a 3 percent discount rate, is $443,067 (2021 dollars) and the annualized NPV during that period would be $51,941. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) would be $256 and $3, respectively. The Council did not select the first alternative because they determined other proposed alternatives provided allocation methods that incorporated more recent landings and were therefore a better representation of the gag portion of the snapper-grouper fishery moving forward. These allocation methods also provided better fairness and equity between the sectors.

TABLE 5—COMPARISON OF COMMERCIAL ALLOCATION, COMMERCIAL ACL, AND EX-VESSEL REVENUE UNDER THE FIRST ALTERNATIVE TO THE PROPOSED ALLOCATION

Year	Proposed commercial allocation	Alternative 1 to proposed allocation	Commercial ACL in lb (kg) under alternative 1 allocation	Change in commercial ACL in lb (kg) under alternative 1 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.51	89,572 (40,629)	4,246 (1,926)	$27,641
2024	0.49	0.51	133,197 (60,417)	5,101 (2,314)	33,208
2025	0.49	0.51	177,660 (80,585)	5,973 (2,709)	38,884
2026	0.49	0.51	221,891 (100,648)	6,840 (3,103)	44,528
2027	0.50	0.51	267,559 (121,363)	7,736 (3,509)	50,361
2028	0.50	0.51	315,067 (142,912)	8,667 (3,931)	56,422
2029	0.50	0.51	362,824 (164,574)	9,604 (4,356)	62,522
2030	0.50	0.51	408,045 (185,086)	10,490 (4,758)	68,290
2031	0.50	0.51	448,677 (203,516)	11,287 (5,120)	73,478
2032+	0.50	0.51	483,945 (219,514)	11,979 (5,434)	77,983

The second alternative to the proposed allocation would use the distribution of landings from 1999 through 2003 to set the commercial and recreational sector allocations at 36.37 percent and 63.63 percent, respectively, of the revised total ACL for gag. Relative to the proposed allocation, this alternative, when applied to the proposed total ACLs, would result in a decrease in ex-vessel revenue that ranges from $139,631 ($688 per vessel) in 2023 to $825,774 ($4,068 per vessel) in 2032 (Table 6). The NPV of the estimated stream of changes in ex-vessel revenue over a 10 year period (2023 through 2032) relative to the proposed allocation, using a 3 percent discount rate, is −$4.02 million (2021 dollars) and the annualized NPV during that period would be −$470,854. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) would be −$2,319 and −$23, respectively. The Council did not select the second alternative because they determined other alternatives provided allocation methods that incorporated more recent landings and were therefore a better representation of the gag portion of the snapper-grouper fishery moving forward. These allocation methods also provided better fairness and equity between the sectors.

TABLE 6—COMPARISON OF COMMERCIAL ALLOCATION, COMMERCIAL ACL, AND EX-VESSEL REVENUE UNDER THE SECOND ALTERNATIVE TO THE PROPOSED ALLOCATION

Year	Proposed commercial allocation	Alternative 2 to proposed allocation	Commercial ACL in lb (kg) under alternative 2 allocation	Change in commercial ACL in lb (kg) under alternative 2 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.3637	63,877 (28,974)	−21,449 (−9,729)	−$139,631
2024	0.49	0.3637	94,988 (43,086)	−33,108 (−15,018)	−215,534
2025	0.49	0.3637	126,696 (57,468)	−44,991 (−20,408)	−292,894
2026	0.49	0.3637	158,239 (71,776)	−56,812 (−25,769)	−369,846
2027	0.50	0.3637	190,806 (86,548)	−69,017 (−31,306)	−449,300
2028	0.50	0.3637	224,686 (101,916)	−81,714 (−37,065)	−531,959
2029	0.50	0.3637	258,743 (117,364)	−94,477 (−42,854)	−615,045
2030	0.50	0.3637	290,992 (131,992)	−106,563 (−48,336)	−693,725
2031	0.50	0.3637	319,968 (145,135)	−117,422 (−53,262)	−764,417
2032+	0.50	0.3637	345,119 (156,543)	−126,847 (−57,537)	−825,774

The third alternative to the proposed allocation would set the commercial and recreational sector allocations as 43.06 percent and 56.94 percent, respectively, of the revised total ACL for gag. These allocations would be based on historical landings information that are equally-weighted for the periods of 1986 through 2008 and 2006 through 2008. Relative to the proposed allocation, this alternative, when applied to the proposed total ACLs, would result in a decrease in ex-vessel revenue that ranges from $63,140 ($311 per vessel) in 2023 to $412,506 ($2,032 per vessel) in 2032 (Table 7). The NPV of the estimated stream of changes in ex-vessel revenue over a 10 year period (2023 through 2032) relative to the proposed allocation, using a 3 percent discount rate, is −$1.98 million (2021 dollars) and the annualized NPV during that period would be −$231,791. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) would be −$1,142 and −$11, respectively. This allocation method uses the allocation formula often used for unassessed stocks, and while this method has been used for some assessed stocks, the Council decided that the years used in this allocation formula would not be the most representative of the gag portion of the snapper-grouper fishery moving forward.

TABLE 7—COMPARISON OF COMMERCIAL ALLOCATION, COMMERCIAL ACL, AND EX-VESSEL REVENUE UNDER THE THIRD ALTERNATIVE TO THE PROPOSED ALLOCATION

Year	Proposed commercial allocation	Alternative 3 to proposed allocation	Commercial ACL in lb (kg) under alternative 3 allocation	Change in commercial ACL in lb (kg) under alternative 3 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.4306	75,627 (34,304)	−9,699 (−4,399)	−$63,140
2024	0.49	0.4306	112,460 (51,011)	−15,636 (−7,092)	−101,789
2025	0.49	0.4306	150,000 (68,039)	−21,687 (−9,837)	−141,180
2026	0.49	0.4306	187,346 (84,979)	−27,705 (−12,567)	−180,360
2027	0.50	0.4306	225,904 (102,468)	−33,919 (−15,385)	−220,816
2028	0.50	0.4306	266,015 (120,662)	−40,385 (−18,318)	−262,905
2029	0.50	0.4306	306,337 (138,952)	−46,883 (−21,266)	−305,208
2030	0.50	0.4306	344,518 (156,271)	−53,037 (−24,057)	−345,272
2031	0.50	0.4306	378,824 (171,832)	−58,566 (−26,565)	−381,266
2032+	0.50	0.4306	408,601 (185,338)	−63,365 (−28,742)	−412,506

The fourth alternative to the proposed allocation would set gag sector allocations and sector ACLs in 2023 proportional to each sector's share of total average landings (commercial and recreational combined) from 2017 through 2019. In subsequent years, as the total ACL increases, the total ACL poundage increase would be split equally between both sectors and added to each sector's ACL from the previous year. This, in effect, would gradually shift the allocation percentages. The 2032 values would remain in effect unless changed by future management action. Relative to the proposed allocation, this alternative, when applied to the proposed total ACLs, would result in an annual decrease in ex-vessel revenue of approximately $110,969 ($547 per vessel) (Table 8). The NPV of the estimated stream of changes in ex-vessel revenue over a 10 year period (2023 through 2032) relative to the proposed allocation, using a 3 percent discount rate, is −$946,558 (2021 dollars) and the annualized NPV during that period would be −$110,965. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) would be −$547 and −$5, respectively. The Council did not select the fourth alternative because they decided the years of average landings used in this method did not best represent the gag portion of the snapper-grouper fishery.

TABLE 8—COMPARISON OF COMMERCIAL ALLOCATION, COMMERCIAL ACL, AND EX-VESSEL REVENUE UNDER THE FOURTH ALTERNATIVE TO THE PROPOSED ALLOCATION

Year	Proposed commercial allocation	Alternative 4 to proposed allocation	Commercial ACL in lb (kg) under alternative 4 allocation	Change in commercial ACL in lb (kg) under alternative 4 allocation	Change in potential ex-vessel revenue (2021 dollars)
2023	0.49	0.39	68,281 (30,972)	−17,045 (−7,731)	−$110,963
2024	0.49	0.43	111,051 (50,372)	−17,045 (−7,731)	−110,963
2025	0.49	0.44	154,641 (70,144)	−17,046 (−7,732)	−110,969
2026	0.49	0.46	198,006 (89,814)	−17,045 (−7,731)	−110,963
2027	0.50	0.46	242,778 (110,122)	−17,045 (−7,731)	−110,963
2028	0.50	0.47	289,354 (131,249)	−17,046 (−7,732)	−110,969
2029	0.50	0.47	336,175 (152,486)	−17,045 (−7,731)	−110,963
2030	0.50	0.48	380,509 (172,596)	−17,046 (−7,732)	−110,969
2031	0.50	0.48	420,344 (190,665)	−17,046 (−7,732)	−110,969
2032+	0.50	0.48	454,921 (206,349)	−17,045 (−7,731)	−110,963

Five alternatives were considered for the proposed action to reduce the commercial trip limit to 300 lb (136 kg). The first alternative, the no action alternative, would retain the current trip limit, which is 1,000 lb (454 kg) until 75 percent of the commercial ACL is met and then 500 lb (227 kg) for the remainder of the fishing year or until the commercial ACL is met. Therefore, it would not be expected to change fishing practices or commercial harvests of gag, nor would it be expected to result in direct economic effects. This alternative was not selected by the Council because it would likely result in a short fishing season and limited availability of gag for seafood consumers. Additionally, the Council did not think that the commercial trip limit step-down would be able to be effectively implemented in a timely manner, particularly in the first several years of the rebuilding plan.

The second alternative to the proposed commercial trip limit of 300 lb (136 kg) would set the commercial trip limit at 200 lb (91 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 32 percent or 74,133 lb (33,626 kg) per year. Relative to the proposed commercial trip limit, this alternative would result in an estimated annual reduction in ex-vessel revenue that is $180,978 (2021 dollars) greater and an annual reduction in economic profits that is $1,810 greater. However, because the trip limit would be modified in conjunction with the revised commercial ACL (Table 2) and NMFS expects the commercial sector to fully harvest the revised ACL even with a 200 lb (91 kg) commercial trip limit, at least in the beginning years of the

rebuilding plan, these economic effects would initially be subsumed under those described for the proposed commercial ACLs and allocations. In later years, the lower trip limit may prevent the full harvest of the commercial ACL, thereby reducing the economic benefits associated with the increasing commercial ACLs; however, landings rates for later years are more uncertain and these effects cannot be quantified with existing data. In general, a lower commercial trip limit may reduce economic efficiency on trips, which may lead to a reduction in economic profits. This alternative was not selected by the Council because a 200 lb (91 kg) trip limit would make trips to catch gag too costly and inefficient.

The third alternative to the proposed commercial trip limit action would set the commercial trip limit at 400 lb (181 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 13 percent or 30,117 lb (13,661 kg) per year. Relative to the proposed commercial trip limit, this alternative would result in an estimated annual reduction in ex-vessel revenue that is $105,571 (2021 dollars) less and an annual reduction in economic profits that is $1,056 less. However, because the trip limit would be modified in conjunction with the revised commercial ACL (Table 2) and NMFS expects the commercial sector to fully harvest the revised ACL even with the reduced commercial trip limit, at least in the beginning years of the rebuilding plan, these economic effects would initially be subsumed under those described for the proposed commercial ACLs and allocations. In later years, a higher trip limit may lead to better utilization of the ACL and greater economic efficiency, thereby increasing the economic benefits associated with the increasing commercial ACLs. However, landings rates for later years are more uncertain and these effects cannot be quantified with existing data. This alternative was not selected by the Council because it would not constrain harvest to ensure the longest commercial season possible under the proposed reduced catch levels.

The fourth alternative to the proposed commercial trip limit action would set the commercial trip limit at 500 lb (227 kg). Under the status quo commercial ACL, this would be expected to reduce commercial gag landings by 8 percent or 18,533 lb (8,406 kg) per year. Relative to the proposed commercial trip limit, this alternative would result in an estimated annual reduction in ex-vessel revenue that is $180,978 less and an annual reduction in economic profits that is $1,810 less. However, because the trip limit would be modified in conjunction with the revised commercial ACL (Table 2) and because NMFS expects the commercial sector to fully harvest the revised ACL even with the reduced commercial trip limit, at least in the beginning years of the rebuilding plan, these economic effects would initially be subsumed under those described for the proposed commercial ACLs and allocations. In later years, the higher trip limit may lead to better utilization of the ACL and greater economic efficiency, thereby increasing the economic benefits associated with the increasing commercial ACLs. However, landings rates for later years are more uncertain and these effects cannot be quantified with existing data. This alternative was not selected by the Council because it would not constrain harvest to ensure the longest commercial season possible under the proposed reduced catch levels.

The fifth and final alternative to the proposed commercial trip limit action would reduce the gag commercial trip limit to 300 lb (136 kg) in 2023 then increase the commercial trip limit to 500 lb (227 kg) in 2026 and to 1,000 lb (454 kg) in 2027 and subsequent years. In 2023 through 2025, the commercial trip limit under this alternative would be the same as the proposed commercial trip limit and therefore would have equivalent economic effects during those years. In 2026, the trip limit would be set 200 lb (91 kg) greater than the proposed trip limit and in 2027, and subsequent years it would be 700 lb (318 kg) greater than the proposed trip limit. These incremental increases may allow for greater utilization of the proposed commercial ACLs and greater economic efficiency, leading to potential increases in economic profits; however, the economic effects cannot be quantified with available data given uncertainty in future commercial landings rates. This alternative was not selected by the Council because it would increase the trip limit in the years specified, regardless of rebuilding success and could have negative long-term effects for the fishery. The Council decided that if it was appropriate to increase the commercial trip limit for gag in the future, this could be done through a framework action to the FMP after data on rebuilding are provided.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Accountability measures, Annual catch limits, Black grouper, Commercial, Fisheries, Fishing, Gag, Recreational, South Atlantic.

Dated: July 6, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

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

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.187, revise paragraph (b)(2)(i) to read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(2) * * *

(i) No more than one fish may be gag or black grouper, combined. However, no gag or black grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero;

(A) In addition to the bag limits specified in paragraph (b)(2)(i) of this section, for gag, the vessel limit for a vessel operating as a private recreational vessel may not exceed 2 fish per vessel per day.

(B) In addition to the bag limits specified in paragraph (b)(2)(i) of this section, for gag, the vessel limit for a vessel operating as a charter vessel or headboat may not exceed 2 fish per vessel per trip.

(C) In addition to the bag limits specified in paragraph (b)(2)(i) of this section, for black grouper, the vessel limit for a vessel operating as a private recreational vessel may not exceed 2 fish per vessel per day.

(D) In addition to the bag limits specified in paragraph (b)(2)(i) of this section, for black grouper, the vessel limit for a vessel operating as a charter vessel or headboat may not exceed 2 fish per vessel per trip.

* * * * *

■ 3. In § 622.190, revise (a) introductory text and paragraph (a)(7) to read as follows:

§ 622.190 Quotas.

* * * * *

(a) *South Atlantic snapper-grouper, excluding wreckfish.* The quotas apply to persons who are not subject to the bag limits. (See § 622.11 for applicability of the bag limits.) The quotas are in gutted weight, that is eviscerated but otherwise whole, except for the quotas in paragraphs (a)(4) through (6) of this section which are in both gutted weight and round weight.

* * * * *

(7) *Gag.*

(i) For the 2023 fishing year—85,326 lb (38,703 kg).

(ii) For the 2024 fishing year—128,096 lb (58,103 kg).

(iii) For the 2025 fishing year—171,687 lb (77,876 kg).

(iv) For the 2026 fishing year—215,051 lb (97,545 kg).

(v) For the 2027 fishing year—259,823 lb (117,854 kg).

(vi) For the 2028 fishing year—306,400 lb (138,981 kg).

(vii) For the 2029 fishing year—353,220 lb (160,218 kg).

(viii) For the 2030 fishing year—397,555 lb (180,328 kg).

(ix) For the 2031 fishing year—437,390 lb (198,397 kg).

(x) For the 2032 and subsequent fishing years—471,966 lb (214,080 kg).

* * * * *

■ 4. In § 622.191, revise paragraph (a)(7) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(7) *Gag.* Until the applicable commercial quota specified § 622.190(a)(7) is reached—300 lb (136 kg), gutted weight. See § 622.190(c)(1) for the limitations regarding gag after the commercial quota is reached.

* * * * *

■ 5. In § 622.193, revise paragraph (c) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) *Gag*—

(1) *Commercial sector.*

(i) If commercial landings for gag, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.190(a)(7), the AA will file a notification with the Office of the Federal Register to close the commercial sector for gag for the remainder of the fishing year. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(ii) If the commercial landings for gag, as estimated by the SRD, exceed the commercial ACL specified in § 622.190(a)(7), and the combined commercial and recreational ACL specified in paragraph (c)(3) of this section, is exceeded during the same fishing year, and gag are overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL for that following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for gag, as estimated by the SRD, reach or are projected to reach the recreational ACL, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such notification, the bag and possession limits for gag in or from the South Atlantic EEZ are zero. The recreational ACL for gag is 90,306 lb (40,962 kg), gutted weight, for 2023; 133,075 lb (60,362 kg), gutted weight, for 2024; 176,665 lb (80,134 kg), gutted weight, for 2025; 220,030 lb (99,804 kg), gutted weight, for 2026; 264,802 lb (120,112 kg), gutted weight, for 2027; 311,378 lb (141,239 kg), gutted weight, for 2028; 358,199 lb (162,476 kg), gutted weight, for 2029; 402,533 lb (182,586 kg), gutted weight, for 2030; 442,368 lb (200,655 kg), gutted weight, for 2031; 476,945 lb (216,339 kg), gutted weight, for 2032 and subsequent years.

(ii) If recreational landings, as estimated by the SRD, exceed the recreational ACL specified in paragraph (c)(2)(i) of this section, then during the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded. NMFS will use the best scientific information available to determine if reducing the length of the recreational fishing season is necessary. When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season, the bag and possession limits for gag in or from the South Atlantic EEZ are zero.

(3) *Combined commercial and recreational ACL.* The combined commercial and recreational ACL for gag is 175,632 lb (79,665 kg), gutted weight, for 2023; 261,171 lb (118,465 kg), gutted weight, for 2024; 348,352 lb (158,010 kg), gutted weight, for 2025; 435,081 lb (192,349 kg), gutted weight, for 2026; 524,625 lb (237,965 kg), gutted weight, for 2027; 617,778 lb (280,219 kg), gutted weight, for 2028; 711,419 lb (322,694 kg), gutted weight, for 2029; 800,088 lb (362,914 kg), gutted weight, for 2030; 879,758 lb (399,052 kg), gutted weight, for 2031; 948,911 lb (430,419 kg), gutted weight, for 2032 and subsequent years.

* * * * *

[FR Doc. 2023–14620 Filed 7–12–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 133

Thursday, July 13, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 14, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Pandemic Assistance Revenue Program (PARP).

OMB Control Number: 0560–0312.

Summary of Collection: The Farm Service Agency (FSA) is issuing payments under the Consolidated Appropriations Act, 2021 (CAA) to respond to the COVID–19 pandemic by assisting producers who suffered an eligible revenue loss in calendar year 2020, compared to their revenue in 2018 or 2019. The producers suffered revenue losses as they faced continuing market disruptions and reduced farm-level prices due to COVID–19.

Need and Use of the Information: The information submitted by respondents will be used by FSA to determine eligibility and issue payments to eligible applicants under PARP. Applicants will complete the PARP applications along with other applicable forms to apply for PARP payments. Failure to solicit applications will result in failure to provide payments to eligible applicants in response to the COVID–19 pandemic as intended by the CAA.

Description of Respondents: Farms.

Number of Respondents: 313,901.

Frequency of Responses: Reporting; On Occasion.

Total Burden Hours: 266,947.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–14855 Filed 7–12–23; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods from July 1, 2023 through June 30, 2024

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2024 (July 1, 2023 through June 30, 2024) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: Implementation date: July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Ruth Decosse, Program Analyst, Policy Branch, SNAS Policy Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314, *Ruth.Decosse@usda.gov* or telephone 703–305–2746.

SUPPLEMENTARY INFORMATION: These programs are located in the Assistance Listings under Nos. 10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

National Average Minimum Value of Donated Foods for the Period July 1, 2023 through June 30, 2024

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Producer Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in

lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 29.50 cents for the period July 1, 2023 through June 30, 2024.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry, and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index decreased by 1.28 percent from 262.50 for March, April, and May of 2022, as previously published in the **Federal Register**, to 259.15 for the same three months in 2023. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2023 through June 30, 2024 will be 29.50 cents per meal. This is a decrease of one half (½) cents from the school year 2023 (July 1, 2022 through June 30, 2023) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2023–14810 Filed 7–12–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Extend and Revise a Previously Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to extend and revise a previously approved information collection entitled ''*Children, Youth, and Families at Risk (CYFAR) Year End Report.*''

DATES: Written comments on this notice must be received by September 11, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONCTACT: Laura Givens, 816–527–5379, *Laura.Givens@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Children, Youth, and Families at Risk (CYFAR) Year End Report.

OMB Control Number: 0524–0043.

Expiration Date of Current Approval: 12/31/2023.

Type of Request: Notice of intent to extend and revise a previously approved information collection for three years.

Abstract: Funding for the Children, Youth, and Families at Risk (CYFAR) community project grants is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 341 *et seq.*), as amended, and other relevant authorizing legislation, which provide jurisdictional basis for the establishment and operation of Extension educational work for benefit of youth and families in communities.

CYFAR funding supports community programs serving children, youth, and families in at-risk environments.

CYFAR funds are intended to support the development of high quality, effective programs based on research and to document the impact of programs on intended audiences. The CYFAR Year End Report collects demographic and impact data from each community site to conduct impact evaluations of the programs on its intended audience. The collection of information serves several purposes. It allows NIFA staff to gauge if the program is reaching the target audience and make programmatic improvements. This collection also allows program staff to demonstrate the impacts and capacity that is developed in the locales where federal assistance is provided.

The evaluation processes of CYFAR are consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), the Federal Activities Inventory Reform Act (FAIR) (Pub. L. 105–270), and the Agricultural, Research, Extension and Education Reform Act (AREERA) of 1998 (Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential Management Agenda evaluations to be conducted to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multi-state significance. The immediate need of this information collection is to provide a means for satisfying accountability requirements. The long-term objective is to provide a means to enable the evaluation and assessment of the effectiveness of programs receiving federal funds and to fully satisfy requirements of performance and accountability legislation in GPRA, the FAIR Act, and AREERA.

NIFA is proposing revisions to the currently approved collection. Specifically, NIFA proposes integrating new CYFAR Common Measures (survey questions) into the online CYFAR Suite Survey Builder application. The new questions will serve to consolidate participant audiences (reducing number of groups from five to three), unify measures across all programs, and link pre- and post-test survey data for reduced administrative burden. The CYFAR Suite will also improve automatic reporting by summarizing data.

Estimate of Burden: The total annual estimated burden for this information collection is 1,173 hours. This includes the time needed for participant education; survey creation and administration; data entry, aggregation, and reporting; and preparation, review, and submission of CYFAR program plans. The only respondents are not-for-profit institutions.

Estimated Number of Respondents: 51.

Estimated Number of Responses per Respondent: 1.

Estimated Burden per Response: 23 hours.

Estimated Total Annual Burden on Respondents: 1,173 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Laura Givens as directed above.

Done at Washington, DC, this day of July 7, 2023.

Dionne F. Toombs,

Associate Director for Programs, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2023–14853 Filed 7–12–23; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–23–BUSINESS–0009]

Notice of Request for Approval of a New Information Collection

AGENCY: Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service, agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency to request approval for a new information collection in support of ascertaining the necessary budgetary criteria for planning and performing construction and other development work for facilities, housing and water and wastewater systems.

DATES: Comments on this notice must be received by September 11, 2023.

ADDRESSES: Comments may be submitted by the following method:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 690–2643. Email *lynn.gilbert@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that Rural Development is submitting to OMB for a new collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RBS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RBS–23–BUSINESS–0009 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: 442—Common Forms Package for Rural Development Budget Forms.

OMB Number: 0570–New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The information collection under OMB Number 0570-New will enable the Agencies to effectively evaluate the financial criteria and responsibilities for funding to stimulate business creation and growth. The programs work through partnerships with public and private community-based organizations and financial institutions to provide financial assistance, business development, and technical assistance to rural businesses. These programs help to provide capital, equipment, space, job training, and entrepreneurial skills that can help to start and/or grow a business. Business Programs also support the creation and preservation of quality jobs in rural areas.

The Consolidated Farm and Rural Development Act, as amended, authorizes the credit programs of the RHS, RBCS and RUS to provide financial assistance for essential community facilities such as construction of community facilities and water and waste systems; and the improvement, development, and financing of businesses, industries, and employment.

The Rural Housing Service (RHS) is authorized under various sections of Title V of the Housing Act of 1949, as amended, to provides financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals in rural areas.

Through various programs, Rural Development provides loan and grant funds to finance many types of projects varying in size and complexity. The Community Facilities program provides affordable funding to develop essential community facilities in rural areas. The Business and Industry (B&I) Loan Programs provide financial backing and technical assistance to stimulate business creation and growth. The programs work through partnerships with public and private community-based organizations and financial institutions to provide financial assistance, business development, and technical assistance to rural businesses. Under the B&I Loan Program, lenders need the legal authority, financial strength, and sufficient experience to operate a successful lending program. This includes lenders that are subject to supervision and credit examination by the applicable agency of the United States or a State.

The collection of information covered by the forms allows Agencies to evaluate the budgets, incomes and equity from applicants for the planning and performing of construction and other development work.

The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office. Electronic submittal of information is also possible through email or USDA's Service Center eForms website.

The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe, and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: RD is requesting approval for one respondent and a one-hour place holder in order for OMB to issue a control number for these forms. The burden for each of the forms will be accounted for within the individual Rural Development program collection packages using the form(s).

Respondents: Individuals or private entities; businesses or other for profit; not-for profit; small businesses; Federal, state, local or tribal governments; institutions of higher education or other research organizations and others.

Estimated Number of Responses per Respondent per Form in package:

Form No.	Responses per respondent
442–2, 442–3, 442–7, 442–22 ...	1

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–14829 Filed 7–12–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–23–Business–0018]

Notice of Request for Approval of a New Information Collection

AGENCY: Rural Housing Service, and Rural Business-Cooperative Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Business-Cooperative Service, and Rural Housing Service, agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency to request approval for a new information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by September 11, 2023.

ADDRESSES: Comments may be submitted by the following method:

• *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 690–2682. Email *lynn.gilbert@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that Rural Development is submitting to OMB for a new collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RBS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RBS–23–Business–0018 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: 7 CFR 1980—Common Forms Package for Guaranteed Loan Forms.

OMB Number: 0570–New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The information collection under OMB Number 0575–New will enable the Agencies to effectively administer the policies, methods, and responsibilities for the funding and transmittal of post-award Federal funding for approved programs and projects.

The purpose of this information collection is to obtain information necessary to efficiently set up a functional system for the transmittal of payments after an applicant has been awarded funding.

Information for the RD forms and their usage in this collection package are included in this supporting statement.

Information will be collected by the field offices from applicants, consultants, lenders, and public entities. The collection of information is considered the minimum necessary to effectively evaluate the overall scope of the project.

Failure to collect information could have an adverse impact on effectively carrying out the mission, administration, processing, and program requirements.

Estimate of Burden: RD is requesting approval for one respondent and a one-hour place holder in order for OMB to issue a control number for these forms. The burden for each of the forms will be accounted for within the individual Rural Development program collection packages using the form(s).

Respondents: Respondents for this data are lending institutions and for-profit businesses but also include individuals and corporations.

Estimated Number of Responses per Respondent per Form in package:

Form No.	Responses per respondent
1980–19	1
1980–41	1
1980–43	1
1980–44	1

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will become a matter of public record.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–14827 Filed 7–12–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–44–2023]

Foreign-Trade Zone (FTZ) 49, Notification of Proposed Production Activity; Getinge Group Logistics Americas LLC; (Health Care Products and Kits); Dayton, New Jersey

Getinge Group Logistics Americas LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Dayton, New Jersey within Subzone 49W. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on July 7, 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: maintenance kits (printer; heater; sterilizer); water utility connector kits; caster kits; electrical parts service kits for boilers; sterilizer steam purifiers; steam and water gun sets; printer replacement kits; valve assembly kits; gas, oil, and water pump assemblies; gas, oil, air, and water filters and filter assemblies; liquid applicator attachments; repair kits (check valve; alarm; temperature probe; electronic display); voltage conversion kits; timer accessory packages; shelf add-on kits; and, surgical light assemblies with mounting and positioning hardware (duty rate ranges from duty-free to 5.7%, and from 15¢ each + 4% + 2.5¢/jewel to 45¢ each + 6.4% + 2.5¢/jewel).

The proposed foreign-status materials and components include: plastic components (hose assemblies; gaskets; O-rings; door seals; end caps; cover plates); rubber components (hose assemblies; gaskets; O-rings; door seals); labels (paper; plastic); zip lock bags; printer paper; preprinted and unprinted paper tags and labels; paper gaskets; technical drawings and manuals; sealing graphite; fiberglass insulation; tubing ferrules; steel and stainless steel components (collars; couplings; studs; spacers; reducers; bushings; chain connectors); stainless steel components (screws; bolts; nuts; washers; screen mesh); steel components (washers; springs); retaining rings; roll pins; hose clamps, collars, and retaining clips; copper components (tubing; pipe; sterilizer fittings); brass components (pipe bushings; nipples; pigtails; unions; elbows; couplings; plugs; caps; tees; nuts; solenoid valves); bronze components (washers; ball valves); brass, bronze, and copper tanks and tank fittings; aluminum clamps and collars; base metal components (keys; hinges; pins; shafts); wheels and casters; door stops, brackets, and supports; steam boilers; steam separators; dosing pumps; axial fan heaters; mechanical spacers and standoffs; bronze water strainers; air and steam filters and filter assemblies; filter gaskets; sterilizer cleaning equipment; thermal printers; printer take-up rolls; brass, bronze, and stainless steel check valves; valves (safety; needle; pneumatic); steam traps; electrical adapters for valves; bearings and bearing assemblies (thrust; eccentric; sleeve); bearing races; polytetrafluoroethylene bearings; Woodruff keys; audible and visual alarms; variable resistors; arc suppressors; relays; electrical conduits; power supplies; switch panels; flash memories; wire harnesses; sensors (flow; level); pressure sensors and gauges; timers; warming shelves; arms for lighting (spring mounting; suspension; extension); ceiling light pendants; light-emitting diode surgical lights; computer screen fixtures; and, installation and operation manuals (duty rate ranges from duty-free to 9.9%, and from 15¢ each + 4% + 2.5¢/jewel to 45¢ each + 6.4% + 2.5¢/jewel). The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and 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 August 22, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: July 10, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–14876 Filed 7–12–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–073, C–570–074]

Common Alloy Aluminum Sheet From the People's Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders; Aluminum Sheet Further Processed in the Republic of Korea

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

SUMMARY: In response to a request from the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members (the domestic industry), the U.S. Department of Commerce (Commerce) is initiating a company-specific circumvention inquiry to determine whether imports of common alloy aluminum sheet (CAAS) from the Republic of Korea (Korea) produced by Gwangyang Aluminum Industries Co., Ltd. (Gwangyang Aluminum), which is completed or assembled using non-subject flat rolled aluminum having a thickness greater than 6.3 millimeters (mm) produced by Henan Mingtai Aluminum Industry Co., Ltd. (Henan Mingtai) or Zhengzhou Mingtai Industry Co., Ltd. (Zhengzhou Mingtai) in the People's Republic of China (China), is circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CAAS from China.

DATES: Applicable July 13, 2023.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2023, the domestic industry [1] filed a circumvention inquiry

[1] The individual members of the Aluminum Association Common Alloy Aluminum Sheet Trade

Continued

request alleging that CAAS from Korea produced by Gwangyang Aluminum, assembled or completed using flat rolled aluminum having a thickness greater than 6.3 mm (aluminum plated) produced by Henan Mingtai [2] in China, is circumventing the AD and CVD orders on CAAS from China [3] and, accordingly, should be included in the scope of the *Orders*.[4] The domestic industry alleges that the further processing in Korea is minor or insignificant and otherwise meets the circumvention criteria set forth in section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(i).

Scope of the Orders

The merchandise covered by the *Orders* is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. A full description of the scope of the *Orders* is provided in the Initiation Checklist.[5]

Merchandise Subject to the Circumvention Inquiry

The circumvention inquiry covers CAAS from Korea produced by Gwangyang Aluminum, assembled or completed using flat rolled aluminum having a thickness greater than 6.3 mm produced by Mingtai in China, and exported to the United States.

Statutory and Regulatory Framework

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested party supporting these allegations.'' The domestic industry alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping or countervailing duty order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country and (E) whether or not the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[6] Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular circumvention inquiry.[7]

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an AD and/or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country have increased after the initiation of the investigation that resulted in the issuance of such order or finding.

Analysis

Based on our analysis of the domestic industry's circumvention request, we determine that the domestic industry satisfied the criteria under 19 CFR 351.226(c); thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention inquiry.[8]

The domestic industry requests that Commerce initiate this inquiry on a company-specific basis, with respect to Gwangyang Aluminum only. The information provided by the domestic industry is centered on Gwangyang Aluminum and does not warrant initiating this circumvention inquiry on a country-wide basis. Therefore, Commerce is initiating this circumvention inquiry with respect to Gwangyang Aluminum.

Commerce intends to establish a schedule for questionnaires and

Enforcement Working Group are: Arconic Corporation; Commonwealth Rolled Products, Inc.; Constellium Rolled Products Ravenswood, LLC; Jupiter Aluminum Corporation; JW Aluminum Company; and Novelis Corporation.

[2] Commerce previously determined that Henan Mingtai and Zhengzhou Mingtai are a single entity. *See Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 83 FR 29088 (June 2022, 2018), and accompanying Preliminary Decision Memorandum at 19, unchanged at *Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value,* 83 FR 57421 (November 15, 2018). Accordingly, for the purposes of this circumvention inquiry, we will consider aluminum plate produced by Henan Mingtai and Zhengzhou Mingtai (collectively, Mingtai).

[3] *See Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order,* 84 FR 2157 (February 6, 2019); and *Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019) (collectively, *Orders*).

[4] *Id.*

[5] *See* Checklist, ''Common Alloy Aluminum Sheet from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Initiation Checklist).

[6] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994), at 893.

[7] *See Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

[8] *See* Initiation Checklist.

comments on the issues related to this inquiry. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rates that would be applicable if the products were determined to be covered by the scope of the *Orders.* Should Commerce issue a preliminary or final circumvention determination, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce determines that the domestic industry's request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether CAAS from Korea produced by Gwangyang Aluminum, assembled or completed using aluminum plate produced by Mingtai in China, and exported to the United States, is circumventing the *Orders.* We included a description of the products that are subject to the circumvention inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry, in the accompanying Initiation Checklist.[9] In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determination in this circumvention proceeding no later than 150 days from the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: July 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–14875 Filed 7–12–23; 8:45 am]

BILLING CODE 3510–DS–P

[9] *Id.*

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Proposed Collection, Comment Request: Governance Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice is being published concurrently with the publication and adoption of the final rule titled ''Governance Requirements for Derivatives Clearing Organizations'' (''Final Rule'').

DATES: Comments must be submitted on or before September 11, 2023.

ADDRESSES: You may submit comments, identified by ''Requirements for Derivatives Clearing Organizations OMB Control No. 3038–0076'' by any of the following methods:

- *CFTC Website: https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Joseph Opron, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (312) 596–0653; email: *jopron@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title: Requirements for Derivatives Clearing Organizations, OMB Control No. 3038–0076. This is a request for a revision of a currently approved information collection.

Abstract: Concurrently with this notice, the Commission published the Final Rule adopting amendments that included new information collection requirements. The revised rules require a DCO to create and maintain minutes of each Risk Management Committee Meeting and to maintain written policies and procedures to make certain that its RMC includes at least two clearing member representatives and, if applicable, at least two representatives of customers of clearing members. The revised rules also require a DCO to adopt written policies and procedures related to the formation and role of each RWG, and to include in those policies and procedures requirements for the DCO to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

With respect to each new collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

information technology; *e.g.,* permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its burden estimate for OMB control number 3038–0076 to account for the amendments described above. Specifically, the Commission believes that the burden under this clearance will increase because the 15 DCOs subject to these requirements will be required under § 39.24(b)(11) to create and maintain minutes of each RMC meeting, and under § 39.24(b)(12) to document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG. The Commission estimates a DCO will spend an average of four hours creating minutes of each RMC meeting and four hours documenting a summary of the topics discussed and the main points raised during each meeting of the RWG, which includes attending the meeting, taking notes, and putting the notes into the required format following the meeting. The Commission estimates that a DCO's RMC and RWG will each need to hold an average of six meetings per year to satisfy the § 39.24(b)(11) and (12) requirements that a DCO's RMC and RWG address all matters that could materially affect the risk profile of the DCO. Based upon the above, the estimated hour burden for this collection is calculated as follows:

Estimated number of respondents: 15.[2]

Estimated number of reports per respondent: 18.

Average number of hours per report: 4.

Estimated gross annual reporting burden: 1,080.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 3, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–14358 Filed 7–12–23; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] The Commission notes that while new § 39.24(d) provides that a DCO may satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) by having rules that permit it to clear only fully collateralized positions, such DCOs are included in the total estimated number of respondents because these DCOs would still be required to develop and disclose governance arrangements required by the other provisions of § 39.24. The Commission's estimate is therefore conservative to the extent that these DCOs are not required to prepare and maintain minutes of each RMC meeting, and document and provide to the RMC, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the RWG.

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to TauMat, LLC; Silver Spring, MD

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army hereby gives notice of its intent to grant to TauMat, LLC; a company having its principal place of business at 10010 Portland Place, Silver Spring, MD 20901, an exclusive license.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: Send written objections to U.S. Army Combat Capabilities Development Command Army Research Laboratory, Partnerships Support Office, FCDD–RLB–SS/Wendy Leonard, Building 4402, 6468 Integrity Ct., Aberdeen Proving Ground, MD 21005–5425 or email to *ORTA@arl.army.mil.*

FOR FURTHER INFORMATION CONTACT: Wendy Leonard, (410) 278–1646, E-Mail: *wendy.a.leonard.civ@army.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Army plans to grant an exclusive license to TauMat, LLC in the following fields of use related to:

- Cooling and thermal energy storage associated with electronic and photonic devices.
- Cooling and thermal energy storage associated with battery/electrical storage devices during charging and discharging.

pertaining to the following;

—''Solid-State Martensitic Transformation Phase Change Material Components for Thermal Energy Storage and Transient Heat Transfer Systems'', ARL 19–02, US Patent Application No. 16/910,652, Filing Date: 06/24/2020, U.S. Publication No. 2020/0407615A1, Publication Date: 12/31/2020.

—''Solid-State Thermal Energy Storage Substrates and Methods for Same.'', ARL 22–04P, US Provisional Patent Application No. 63/521,035, Filing Date: 06/14/2023.

The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Combat Capabilities Development Command Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). Competing applications completed and received by the U.S. Army Combat Capabilities Development Command Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–14890 Filed 7–12–23; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Five-Year Extension of Defense Health Agency Evaluation of Non-United States Food and Drug Administration Approved Laboratory Developed Tests Demonstration Project

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice is to advise interested parties of an additional five-year extension of the Defense Health Agency's (DHA) Evaluation of Non-United States Food and Drug Administration (FDA) Approved Laboratory Developed Tests (LDTs) Demonstration Project (hereinafter referred to as the ''LDT demonstration''). The original notice was published on June 18, 2014. The LDT demonstration was effective July 18, 2014. It remained in effect for three years (July 18, 2017). A notice was published on June 20, 2017 extending the LDT demonstration for three years. The three-year extension was effective July 19, 2017, through July 18, 2020. A second notice extending the LDT demonstration for an additional three years was published on July 10, 2020. The three-year extension was effective July 19, 2020. It is scheduled to end July 18, 2023. As uncertainty remains regarding future regulatory oversight of LDTs, the LDT demonstration will now be extended for five additional years (July 18, 2028). Additionally, this notice announces the removal of preconception and prenatal carrier screening for Cystic Fibrosis (CF) from the LDT demonstration as these carrier screening tests have been added to the TRICARE Basic (*i.e.,* medical) benefit as directed by the National Defense Authorization Act (NDAA) of 2022.

DATES: The extension of this demonstration will be effective July 19, 2023. It will continue through July 18, 2028.

FOR FURTHER INFORMATION CONTACT: LaChanda Black, Defense Health Agency, (303) 676–3575, *lachanda.m.black.civ@health.mil*.

SUPPLEMENTARY INFORMATION: For additional information on the DHA LDT demonstration, please see 79 FR 34726–34729, 82 FR 28052, and 85 FR 41574–41575. According to title 32, Code of Federal Regulations (CFR), section 199.4(g)(15)(i)(A), TRICARE may not cost-share devices, including LDTs, that have not received FDA required device 510(k) clearance or premarket approval (referred to as ''non-FDA-approved'' hereafter). LDTs with FDA clearance or approval are available for cost-sharing under the TRICARE Basic (*i.e.,* medical) benefit as long as they otherwise meet TRICARE criteria for coverage.

On June 18, 2014, a notice was published in the **Federal Register** (79 FR 34726) announcing the start of the LDT demonstration initiated by the DHA to review non-FDA-approved LDTs to determine if they meet TRICARE's requirements for safety and effectiveness, and otherwise meet TRICARE criteria for coverage. Under the LDT demonstration, DHA would allow those LDTs that met such criteria to be covered as a benefit. This demonstration also extended coverage for preconception and prenatal CF carrier screening, when provided in accordance with the most current American College of Obstetricians and Gynecologists (ACOG) guidelines. The purpose of this demonstration is to improve the quality of health care services for TRICARE beneficiaries.

Effective December 27, 2021, Section 702 of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), codified at 10 U.S.C. 1079(a)(19), extended TRICARE Basic (*i.e.,* medical) benefit coverage for preconception and prenatal carrier screening tests for Cystic Fibrosis, Spinal Muscular Atrophy, Fragile X Syndrome, Tay-Sachs Disease, Hemoglobinopathies, and conditions linked with Ashkenazi Jewish descent. As a result, preconception and prenatal carrier screening for CF will be removed from the LDT demonstration as it is now incorporated into the TRICARE Basic (*i.e.,* medical) benefit.

Non-FDA-approved LDTs covered under the LDT demonstration are available for cost-sharing for eligible TRICARE beneficiaries only when performed by laboratories that are assessed and certified or accredited under minimum quality standards set by the Centers for Medicare and Medicaid Services (CMS) under the Clinical Laboratory Improvement Amendments (CLIA) of 1988, *i.e.,* CLIA certified. CMS regulates laboratories that perform non-FDA-approved LDTs as well as FDA-approved/cleared tests. Laboratories performing moderate or high complexity tests are subject to specific regulatory standards governing certification, personnel, proficiency testing, patient test management, quality assurance, quality control, and inspections. CLIA certification and biennial surveys evaluate whether the laboratory has verified or established the analytical validity of the tests they offer, including LDTs. Analytical validity refers to how well a test performs in the laboratory; that is, how well the test measures the properties or characteristics it is intended to measure. However, CLIA certification does not assure a device is safe and effective for its intended use or impose any type of post-market surveillance or adverse event reporting requirements.

For the TRICARE Overseas Program (TOP), an exception to the requirement for CLIA certification for overseas laboratories continues. This is due to the majority of overseas laboratories not having CLIA certification. As with the notice published at 85 FR 41574, this notice restates that non-FDA-approved LDTs covered under the LDT demonstration shall be available for cost-sharing for qualified TOP beneficiaries when performed by either CLIA-certified laboratories or laboratories that are assessed by the TOP contractor to be in accordance with the host nation's credentialing/accreditation standards when those standards for credentialing/accreditation are comparable to CLIA standards.

LDTs provide an important health care capability for the TRICARE Program. Nonetheless, LDTs are complex and do have some risks associated with their use. For example, inaccurate tests may place patients at otherwise avoidable risk. While laboratories that offer LDTs are subject to the Federal Food, Drug, and Cosmetic Act (FFDCA), the FDA has generally exercised enforcement discretion towards LDTs, such that it has generally not enforced applicable provisions under the FFDCA and FDA regulations with respect to LDTs. TRICARE's regulatory requirement at 32 CFR 199.4(g)(15)(i)(A) requires LDTs covered in the TRICARE Program to be FDA-approved or cleared, if required under FFDCA. Further, as mentioned above, the FDA generally exercises enforcement discretion for most LDTs, and most laboratories offering LDTs do not submit their devices to the FDA for review. Therefore, most LDTs do not satisfy the requirements at 32 CFR 199.4(g)(15), that the safety and efficacy of these devices be established in order to permit cost-sharing. As a result, TRICARE is unable to cost share for such LDTs.

However, in some instances, LDTs are important and necessary tests and in many instances, there are no FDA-approved/cleared alternatives. Therefore, the TRICARE Program has endeavored to evaluate LDTs through its demonstration project initiated in 2014. Although ongoing for more than eight years, additional work is necessary to ensure that the TRICARE program conducts the appropriate evaluation of these tests based on reliable evidence, and permit TRICARE cost-sharing of medically necessary and appropriate LDTs that are found to otherwise meet TRICARE criteria for coverage, including requirements for safety and effectiveness.

While the DoD had hoped that another LDT demonstration extension would not be required, uncertainty remains regarding future regulatory oversight of LDTs. In the absence of any

change in the oversight of LDTs at this time, the DoD has determined that continuation of the LDT demonstration for an additional five years is necessary to provide TRICARE beneficiaries and their health care providers with seamless access to safe and effective, medically necessary tests, as determined by TRICARE, to support health care decisions and treatment.

Health care costs projected for the LDT demonstration over the five-year extension (Fiscal Year (FY) 2023–FY 2028) are $198.8 million (M) and $2.1M in administrative costs for all contracts combined. Because all managed care support contractors currently have systems in place for the LDT demonstration, no additional start-up costs are anticipated for this five-year extension.

During the next five years, the DHA will continue to evaluate the LDT examination and recommendation process to assess feasibility, resource requirements, and the cost-effectiveness of establishing an internal safety and efficacy review process to permit TRICARE cost-sharing for an ever-expanding pool of non-FDA-approved LDTs, including tests for cancer risk, diagnosis, and treatment; blood and clotting disorders; a variety of genetic diseases and syndromes; and neurological conditions. The results of the evaluation will provide an assessment of the potential improvement of the quality of health care services for beneficiaries who would not otherwise have access to tests that meet TRICARE requirements for safety and effectiveness. Based on the results of the demonstration evaluation, and status of the regulatory oversight of LDTs, a recommendation will be made on whether to modify 32 CFR 199.4(g)(15) to permit TRICARE cost-sharing of non-FDA approved LDTs that are found to meet TRICARE requirements for safety and effectiveness. Our intent is for the LDT demonstration to conclude at the end of this five-year extension. Should the FDA issue final guidance on LDTs and/or enforce the requirement for clearance or premarket approval for LDTs, the Director, DHA will modify or terminate the LDT demonstration, as appropriate, and the DoD will ensure compliance with applicable federal law and regulations.

The LDT demonstration continues to be authorized by 10 U.S.C. 1092.

Dated: July 7, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–14809 Filed 7–12–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0059]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2).

OMB Control Number: 1845–0089.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 564.

Total Estimated Number of Annual Burden Hours: 564.

Abstract: 34 CFR part 668—Student Assistance General Provisions, Subpart K—Cash Management (§ 668.162) establishes the rules and procedures for a participating institution to request, maintain, disburse, and manage the Title IV (TIV) program funds. Institutions must complete and submit a Form 270 to request TIV program funds while participating under the Reimbursement and Heightened Cash Monitoring payment methods as explained in § 668.162(c) and (d). We are requesting an extension of the currently approved information collection. There have been no changes to the information requested or the form since its prior approval in September 2020.

Dated: July 10, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–14885 Filed 7–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tests Determined To Be Suitable for Use in the National Reporting System for Adult Education

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces tests, test forms, and delivery formats that the Secretary determines to be suitable for use in the National Reporting System for Adult Education (NRS). This notice relates to the approved information collections under OMB control numbers 1830–0027 and 1830–0567.

FOR FURTHER INFORMATION CONTACT: John LeMaster, Department of Education, 400 Maryland Avenue SW, Room 10–223, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–6218. Email: *John.LeMaster@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 January 14, 2008, and as amended on August 19, 2016, we published in the **Federal Register** final regulations for 34 CFR part 462, Measuring Educational Gain in the National Reporting System for Adult Education (NRS regulations) (73 FR 2305, January 14, 2008, as amended at 81 FR 55552, August 19, 2016). The NRS regulations established the process the Secretary uses to determine the suitability of tests for use in the NRS by States and local eligible providers. We annually publish in the **Federal Register**, and post on the internet at *www.nrsweb.org,* a list of the names of tests and the educational functioning levels the tests are suitable to measure in the NRS as required by § 462.12(c)(2).

On August 7, 2020, the Secretary published in the **Federal Register** (85 FR 47952) an annual notice consolidating information from previous notices that announced tests determined to be suitable for use in the NRS, in accordance with § 462.13 (August 2020 notice). Also, in the August 2020 notice, the Secretary announced that ESL tests and test forms approved for an extended period through February 2, 2021, are approved for an additional extended period through February 2, 2023, and that an Adult Basic Education (ABE) test and test forms previously approved for a three-year period through March 7, 2021, are approved for an extended period through March 7, 2023.

On December 6, 2021, the Secretary published in the **Federal Register** (86 FR 69021), an annual notice with the same list of approved tests and test forms as was published in the August 2020 notice (December 2021 notice).

On September 23, 2022, the Secretary published in the **Federal Register** (87 FR 58078) an annual notice announcing that English as a Second Language (ESL) tests and test forms previously approved for an extended period through February 2, 2023, are approved for an additional extended period through February 2, 2024, and that an ABE test and test forms previously approved for an extended period through March 7, 2023, are approved for an additional extended period through March 7, 2024.

In this notice, the Secretary announces new tests that have been determined to be suitable for use in the NRS, in accordance with § 462.13. Three tests measure the NRS educational functioning levels for ABE at the ABE levels specified in this notice, and four tests measure the new NRS educational functioning levels for ESL at the ESL levels specified in this notice. With the Secretary's approval of the new ESL tests in this notice, the new educational functioning levels for ESL described in Appendix A of Measures and Methods for the National Reporting System for Adult Education (OMB Control Number: 1830–0027) are now implemented.

The new tests announced in this notice have been determined to be suitable for use in the NRS for a period of either seven or three years. A seven-year approval requires no additional action on the part of the publisher, unless the Department later determines that the information the publisher submitted as a basis for the Secretary's review was inaccurate or that the test has been substantially revised. A three-year approval is issued with a set of conditions that must be met by the completion of the three-year time period. If these conditions are met, the test is approved for continued use in the NRS. If these conditions are not met, the test will not be approved for continued use in the NRS.

Under the transition rules in § 462.4, the Secretary also announces in this notice a list of tests with NRS approvals expiring on February 2, 2024, and March 7, 2024, which States and local eligible providers may continue to use during a sunset period ending on June 30, 2024. The ESL educational functioning level descriptors to which the ESL tests with expiring NRS approvals are aligned will be retired on June 30, 2024. Until that time, for the program year which begins on July 1, 2023, and ends on June 30, 2024, both the current ESL educational functioning level descriptors and the new ESL educational functioning level descriptors will be in effect. States must use an ESL assessment that is aligned to the appropriate ESL educational functioning level descriptors.

Adult education programs must use only the forms and computer-based delivery formats for the tests approved in this notice. If a particular test form or computer delivery format is not explicitly specified for a test in this notice, it is not approved to measure educational gain in the NRS.

TESTS DETERMINED TO BE SUITABLE FOR USE IN THE NRS FOR A SEVEN-YEAR PERIOD FROM THE PUBLICATION DATE OF THIS NOTICE:

The Secretary has determined that the following test is suitable for use in Mathematics at all ABE levels of the NRS for a period of seven years from the publication date of this notice:

Comprehensive Adult Student Assessment System (CASAS) Math GOALS Series. Forms 921/922, 923/924, 925/926, 927/928, and 929/930 are approved for use on paper and through a computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org/.*

The Secretary has determined that the following tests are suitable for use at all ESL levels of the NRS for a period of seven years from the publication date of this notice:

(1) *Basic English Skills Test (BEST) Plus 3.0.* Forms 1 and 2 are approved for use on paper and through a computer-based delivery format with adaptive (Part A) and fixed form (Part B) sections. Publisher: Center for Applied Linguistics, 4646 40th Street NW, Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org.*

(2) *Comprehensive Adult Student Assessment System (CASAS) Listening STEPS.* The Locator Test and Forms 621/622, 623/624, 625/626, 627/628, and 629/630 are approved for use through paper-based testing and CDs, and through a computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org/.*

(3) *Comprehensive Adult Student Assessment System (CASAS) Reading STEPS.* The Locator Test and Forms 621/622, 623/624, 625/626, 627/628, and 629/630 are approved for use through paper-based testing and through a computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org/.*

The Secretary has determined that the following test is suitable for use at ESL levels 1 through 4 of the NRS for a period of seven years from the publication date of this notice:

Basic English Skills Test (BEST) Literacy 2.0. Forms 1, 2, and 3 are approved for use in paper delivery format. Publisher: Center for Applied Linguistics, 4646 40th Street NW, Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org.*

TESTS DETERMINED TO BE SUITABLE FOR USE IN THE NRS FOR A THREE-YEAR PERIOD FROM THE

PUBLICATION DATE OF THIS NOTICE:

The Secretary has determined that the following test is suitable for use in Mathematics at all ABE levels of the NRS for a period of three years from the publication date of this notice:

ACT WorkKeys Applied Math. Forms 014, 015, 016, and 017 are approved for use on paper and through a computer-based delivery format. Publisher: ACT, 500 ACT Drive, Iowa City, Iowa 52243–0168. Telephone: (319) 337–1270. Internet: *www.act.org.*

The Secretary has determined that the following test is suitable for use in Literacy/English Language Arts at ABE levels 2 through 6 of the NRS for a period of three years from the publication date of this notice:

ACT WorkKeys Workplace Documents. Forms 018, 019, 020, and 021 are approved for use on paper and through a computer-based delivery format. Publisher: ACT, 500 ACT Drive, Iowa City, Iowa 52243–0168. Telephone: (319) 337–1270. Internet: *www.act.org.*

TESTS WITH NRS APPROVALS EXPIRING ON FEBRUARY 2, 2024, THAT MAY BE USED IN THE NRS DURING A SUNSET PERIOD ENDING ON JUNE 30, 2024:

The Secretary has determined that the following tests may be used at all ESL levels of the NRS during a sunset period ending on Jun 30, 2024:

(1) *Basic English Skills Test (BEST) Literacy.* Forms B, C, and D are approved for use on paper. Publisher: Center for Applied Linguistics, 4646 40th Street NW, Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org.*

(2) *Basic English Skills Test (BEST) Plus 2.0.* Forms D, E, and F are approved for use on paper and through the computer-adaptive delivery format. Publisher: Center for Applied Linguistics, 4646 40th Street NW, Washington, DC 20016–1859. Telephone: (202) 362–0700. Internet: *www.cal.org.*

(3) *Comprehensive Adult Student Assessment Systems (CASAS) Life and Work Listening Assessments (LW Listening).* Forms 981L, 982L, 983L, 984L, 985L, and 986L are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

(4) *Comprehensive Adult Student Assessment Systems (CASAS) Reading Assessments (Life and Work, Life Skills, Reading for Citizenship, Reading for Language Arts—Secondary Level).* Forms 27, 28, 81, 82, 81X, 82X, 83, 84, 85, 86, 185, 186, 187, 188, 310, 311, 513, 514, 951, 952, 951X, and 952X of this test are approved for use on paper and through the computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org.*

(5) *Tests of Adult Basic Education Complete Language Assessment System-English (TABE/CLAS–E).* Forms A and B are approved for use on paper and through a computer-based delivery format. Publisher: Data Recognition Corporation—CTB, 13490 Bass Lake Road, Maple Grove, MN 55311. Telephone: (800) 538–9547. Internet: *www.tabetest.com.*

TEST WITH NRS APPROVAL EXPIRING ON MARCH 7, 2024, THAT MAY BE USED IN THE NRS DURING A SUNSET PERIOD ENDING ON JUNE 30, 2024:

The Secretary has determined that the following test may be used in Mathematics at all ABE levels of the NRS during a sunset period ending on June 30, 2024:

Comprehensive Adult Student Assessment System (CASAS) Math GOALS Series. Forms 900, 913, 914, 917, and 918 are approved for use on paper and through a computer-based delivery format. Publisher: CASAS, 5151 Murphy Canyon Road, Suite 220, San Diego, CA 92123–4339. Telephone: (800) 255–1036. Internet: *www.casas.org/.*

REVOCATION OF TESTS:

Under certain circumstances—*i.e.,* a determination by the Secretary either that the information the publisher submitted as a basis for the Secretary's review of the test was inaccurate or that a test has been substantially revised—the Secretary may revoke the determination that a test is suitable after following the procedures in § 462.12(e). If the Secretary revokes the determination of suitability, the Secretary announces the revocation, as well as the date by which States and local eligible providers must stop using the revoked test, through a notice published in the **Federal Register** and posted on the internet at *www.nrsweb.org.*

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

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.

Program Authority: 29 U.S.C. 3292.

Amy Loyd,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2023–14825 Filed 7–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0100]

Identifying Burden Across Department of Education Information Collection Requests; Request for Public Input

AGENCY: Office of the Chief Data Officer (OCDO), Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education.

ACTION: Request for public input.

SUMMARY: The U.S. Department of Education (Department) is seeking comments from the public on how it can reduce the burden associated with its information collection requests (ICRs) on State, local, territorial, and Tribal governments, educational institutions, nonprofits, and individuals, while maintaining data, information, and analyses critical to fulfill the Department's mission. This effort will help the Department identify improvements, redundancies in information collections, and inefficiencies in collections in order to improve the value and use of data.

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *https://*

www.regulations.gov. If this site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* If comments cannot be submitted electronically, please submit by postal mail or delivery to the following address: Manager of the Strategic Collections and Clearance Team, Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–8240. A list of active ICRs is available on *reginfo.gov.* Find the list of current information collections by selecting ''Department of Education'' from the Select Agency picklist under ''Current Inventory,'' and click ''Submit.'' Please reference the OMB control number when submitting comments regarding a specific ICR. Comments submitted after the comment period will not be accepted.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joanne Bogart, *joanne.bogart@ed.gov* and 202–205–7855.

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:

Public Participation: Interested persons are invited to comment on this notice by submitting written data, views, or arguments using the method identified in the **ADDRESSES** section.

Instructions: All submissions must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov.* Please exclude any personally identifiable information.

Docket: For access to the docket to read comments, go to *http://www.regulations.gov.*

Background

The Department collects information to support and advance its mission and respond to regulatory and statutory requirements. Information collection requests can include grant and financial aid applications, performance reports, studies, and statistical information that promote transparency and advances the field. The Department is now examining existing data collections to ensure that they generate benefits to students, families, educators, institutions, and the public that are commensurate with the effort involved with providing the information. To inform this work, the Department is soliciting public input to (1) better understand how specific ICRs may impose unnecessary burdens on State, local, territorial, and Tribal governments, educational institutions, nonprofits, and individuals, and (2) collect suggestions for improving ICRs to reduce burden while balancing the important purpose of the collections. This effort will support the Department in addressing requirements under the Paperwork Reduction Act (Pub. L. 104–13), including but not limited to minimizing paperwork burden on the public and ensuring the greatest public benefit from information created, collected, maintained, used, shared, and disseminated by or for the Federal Government. It will also inform the Department's work to address priorities outlined in Office of Management and Budget (OMB) memorandum M22–10 ''Improving Access to Public Benefits Programs Through the Paperwork Reduction Act,'' which provides guidance for Federal agencies on (1) more completely and transparently articulating burdens and associated costs experienced by the public when accessing essential public benefits programs, and (2) using an analysis of the submissions to ''minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected.''

Request For Public Input

A. Importance of Public Feedback

To achieve the objectives outlined in this document, it is critical that public input informs improvements in strategies, processes, and planning. The Department's ICRs affect many different individuals and entities, all of whom are likely to have useful information, data, and perspectives on the benefits and burdens of our existing processes. Given that unique knowledge, public feedback will play a significant role in improving the information collection process.

B. Maximizing the Value of Public Feedback

This notice contains a list of questions, the answers to which will assist the Department in identifying potential information collection processes and burdens that may benefit from review. The goals of this request are to reduce burdens on the affected groups, saving costs and time for both the affected groups and the Government while maintaining the critical purposes of the collections, increasing navigability, reducing redundancy, promoting simplification, improving efficiency, and removing barriers that unnecessarily impede access to resources. The Department encourages public comment on these questions and seeks any other information or data relevant to this notice. Public feedback that simply states that a stakeholder feels strongly that the Department should change its processes regarding information collections may not be as useful as feedback that contains specific information on changes that should be considered, or how a proposed change may reduce burden or otherwise improve existing submission processes.

Commenters should consider the principles below as they provide feedback on this notice:

- If a comment is about a specific OMB approved information collection, identify the collection by providing the OMB number, which can typically be found on the first page of a form or in the burden statement, and any data elements. You can also find this information in *reginfo.gov* under current inventory for the Department of Education. The links to individual ICRs can be obtained from that list.
- Explain why you recommend that a form, information collection, or submission process be modified or streamlined.
- To the extent feasible, illustrate the costs and time, burdens, and your perspective on the utility of respective collections and how proposed changes could reduce costs and burdens or increase the utility to the Department or the public.
- Focus on processes considered burdensome that have been in effect for enough time to warrant a fair evaluation (*i.e.,* at least a year, in most cases).

C. Questions for Commenters

The non-exhaustive list of questions below is meant to assist members of the public in formulating comments and is not intended to restrict the feedback that members of the public may provide:

(1) Do some Department information collections or processes place a more significant burden on certain types of respondents, particularly individuals and entities that could be more adversely affected? If so, what impact could this have on these respondents in accessing public benefits?

(2) Do some Department information collection requests contain questions that the commenter might perceive as having limited value or utility? If so, please identify specific data elements when recommending burden reduction solutions.

(3) Do some Department information collections request duplicative information? If so, please recommend solutions (for example, eliminating duplicative questions in a specific collection or consolidating multiple collections)?

(4) What data-linkage or data-sharing activities can the Department engage in to reduce the burden of information collections?

(5) The Department recognizes that burden can be reduced by improving the usability of forms. How might the Department reduce burden by improving the usability of forms, independent of eliminating data collections or data elements?

(6) What additional feedback would you like to share regarding challenges, barriers, or suggested improvements for obtaining benefits from the Department?

Review of Public Feedback

The Department will use the public's feedback to inform an action plan for reducing burden, pursuant to OMB's memorandum. The Department will also use the public's feedback to consider reduction of administrative burdens more broadly. This notice is issued solely for information and program-planning purposes. Public input provided in response to this notice does not bind the Department to any further actions, including publishing a formal response or agreeing to initiate a recommended change. The Department will consider the feedback and make changes or improvements at its sole discretion.

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

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.

Roberto J. Rodriguez,

Assistant Secretary for Planning, Evaluation and Policy Development.

[FR Doc. 2023–14888 Filed 7–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0130]

Agency Information Collection Activities; Comment Request; Stronger Connections Grant Program Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 11, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0130. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sarah Newman, 202–453–6956.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Stronger Connections Grant Program Annual Performance Report.

OMB Control Number: 1810–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 10,053.

Total Estimated Number of Annual Burden Hours: 40,636.

Abstract: The Bipartisan Safer Communities Act (BSCA) provides $1 billion in funding to State educational agencies (SEAs) to be distributed under Title IV, Part A of the Elementary and Secondary Education Act of 1965 (ESEA). The BSCA specifies that SEAs must make competitive subgrants to high-need local educational agencies (LEAs), as determined by the SEA, for activities to support safe and healthy students under section 4108 of the ESEA. The Department of Education has designated BSCA section 4108 funds as the Stronger Connections grant program.

This is a new information collection request for the Stronger Connections grant program annual performance reporting. Under the Education Department's General Administrative Regulations (EDGAR, Section 75.720), grantees shall submit annual performance reports. In addition, in order to receive a Stronger Connections grant award, SEAs were required to

submit an assurance that the SEA will submit such other information as the Secretary may later require, such as (1) the identification of the LEAs awarded Stronger Connections grant funds, (2) how the SEA and its LEAs are using Stronger Connections grant funds, and (3) whether the SEA will evaluate the effectiveness of the Stronger Connections grant program, including the effectiveness of LEA use of Stronger Connections grant funds and, if so, how it will do so.

As part of the public comment period review, ED requests that SEAs and its other stakeholders respond to the directed questions found in Attachment A.

Dated: July 10, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–14841 Filed 7–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a virtual meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, August 7, 2023, 10 a.m. to 4 p.m. EDT.

ADDRESSES: This meeting is open to the public. This meeting will be held digitally via Zoom. Information on how to participate can be found on the website closer to the meeting date at *https://science.osti.gov/hep/hepap/meetings/.*

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–35/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–1298; Email: *John.Kogut@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To introduce new HEPAP members, discuss the ongoing International Benchmarking study and discuss the progress and plan for a new Particle Physics Project Prioritization Panel (P5) report.

Tentative Agenda:

- Brief update from DOE—Glen Crawford
- Brief update from NSF—Jim Shank
- Discussion of International Benchmarking Study—Patricia McBride
- Discussion of the P5 Process and Timeline—Hitoshi Murayama
- Discussion

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298, or by email at *John.Kogut@science.doe.gov*. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the High Energy Physics Advisory Panel website at *https://science.osti.gov/hep/hepap/meetings/.*

Signed in Washington, DC, on July 7, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–14813 Filed 7–12–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ23–12–001]

Vermont Electric Cooperative, Inc.; Notice of Filing

Take notice that on June 30, 2023, Vermont Electric Cooperative, Inc. submits tariff filing: VEC HQUS Transfer Agreement to be effective July 1, 2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. 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.

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.*

Comment Date: 5:00 p.m. Eastern Time on July 21, 2023.

Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14859 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX23–6–000]

Ventasso Energy Storage, LLC; Notice of Filing

Take notice that on July 5, 2023, pursuant to section 211 of the Federal Power Act (FPA),[1] section 9.3.3 of the San Diego Gas & Electric Company (SDG&E) Transmission Owner Tariff (TO Tariff), Ventasso Energy Storage, LLC (Ventasso Energy Storage) filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring SDG&E to provide interconnection and transmission services for Ventasso Energy Storage's proposed battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the TO Tariff, CAISO's Fifth Replacement FERC Electric Tariff, and the Large Generator Interconnection Agreement between Ventasso Energy Storage and SDG&E, dated October 10, 2022, as it may be in effect from time to time.[2]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 (*https://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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *https://www.ferc.gov.* 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.

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.*

Comment Date: 5 p.m. Eastern Time on July 26, 2023.

Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14858 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824j (2018).

[2] The LGIA is associated with CAISO Queue Position #1662 for facilities interconnecting at the 69 kV bus of the El Cajon Substation.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2321–000]

Dunns Bridge Energy Storage, 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 Dunns Bridge Energy Storage, 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 27, 2022.

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.

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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: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14863 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2324–000]

Cavalry Energy Center, 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 Cavalry Energy Center, 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 27, 2022.

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: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14862 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1437–014.
Applicants: Tampa Electric Company.
Description: Triennial Market Power Analysis for Southeast Region of Tampa Electric Company.
Filed Date: 6/30/23.
Accession Number: 20230630–5450.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–1595–017; ER10–1598–017; ER20–1641–004.
Applicants: Southern Illinois Generation Company, LLC, Lincoln Generating Facility, LLC, Crete Energy Venture, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Crete Energy Venture, LLC, et al.
Filed Date: 6/30/23.
Accession Number: 20230630–5456.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–1915–012; ER10–1963–012; ER10–2638–012; ER10–3274–004; ER10–3275–006; ER10–3278–004; ER18–213–004; ER20–2060–002; ER22–284–001; ER23–1766–001; ER23–2113–001.
Applicants: ETEM Remediation Two LLC, Boott Hydropower, LLC, MPH AL Pierce, LLC, MPH Rockaway Peakers, LLC, Pittsfield Generating Company, L. P., Forked River Power LLC, Capitol District Energy Center Cogeneration Associates, Pawtucket Power Associates Limited Partnership, Waterbury Generation, LLC, Jamaica Bay Peaking Facility, LLC, Bayswater Peaking Facility, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Bayswater Peaking Facility, LLC, et al.
Filed Date: 6/29/23.
Accession Number: 20230629–5208.
Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10–2193–004.
Applicants: H.Q. Energy Services (U.S.) Inc.
Description: Triennial Market Power Analysis for Northeast Region of H.Q. Energy Services (U.S.) Inc.
Filed Date: 6/30/23.
Accession Number: 20230630–5439.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2309–007; ER10–3058–005; ER10–3059–005; ER10–3065–005; ER10–3066–005; ER22–296–002.
Applicants: Jackson Generation, LLC, Edgewood Energy, LLC, Shoreham Energy, LLC, Equus Power I, L.P., Pinelawn Power, LLC, Elwood Energy, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Elwood Energy, LLC, et al.
Filed Date: 6/29/23.
Accession Number: 20230629–5210.
Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10–2310–007; ER10–2311–007; ER10–2312–007; ER10–2314–007; ER12–1195–006;

ER14–2486–004; ER15–595–004; ER15–924–004; ER15–926–004; ER15–927–004; ER17–2580–003.

Applicants: SEMASS Partnership, Covanta Plymouth Renewable Energy, LLC, Covanta Niagara I, LLC, Covanta Haverhill Associates, LLC, Covanta Fairfax, LLC, Covanta Union, LLC, Camden County Energy Recovery Associates, L.P., Covanta Energy Marketing LLC, Covanta Hempstead Company, Covanta Essex Company, Covanta Delaware Valley, L.P.

Description: Triennial Market Power Analysis for Northeast Region of Covanta Delaware Valley, L.P., et al.

Filed Date: 6/29/23.

Accession Number: 20230629–5202.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10–3194–009; ER10–3195–010; ER16–581–011; ER16–2271–010; ER17–1370–010; ER20–1385–004; ER20–1853–003; ER21–1254–004; ER21–1498–003; ER21–2204–004; ER22–210–002; ER22–1927–002; ER22–1928–001; ER22–1929–002; ER22–1945–001.

Applicants: Powells Creek Farm Solar, LLC, ENGIE Solidago Solar LLC, Salt City Solar LLC, Sunnybrook Farm Solar, LLC, ENGIE 2020 ProjectCo-NH1 LLC, ENGIE Power & Gas LLC, Hawtree Creek Farm Solar, LLC, Genbright LLC, Whitehorn Solar LLC, Bluestone Farm Solar, LLC, ENGIE Energy Marketing NA, Inc., ENGIE Resources LLC, ENGIE Portfolio Management, LLC, MATEP Limited Partnership, MATEP LLC.

Description: Triennial Market Power Analysis for Northeast Region of MATEP LLC, et al.

Filed Date: 6/29/23.

Accession Number: 20230629–5209.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10–3230–013; ER10–3239–013; ER10–3240–013; ER10–3253–013; ER13–1485–013; ER14–1777–011; ER15–2722–009; ER18–1310–004; ER18–2264–009; ER19–289–009; ER19–461–004; ER19–2462–007.

Applicants: Macquarie Energy LLC, Wheelabrator Concord Company, L.P., Cleco Cajun LLC, Macquarie Energy Trading LLC, Wheelabrator Millbury Inc., Wheelabrator Saugus Inc., Wheelabrator Falls Inc., Wheelabrator Baltimore, L.P., Wheelabrator Bridgeport, L.P., Wheelabrator North Andover Inc., Wheelabrator Westchester, L.P., Wheelabrator Portsmouth Inc.

Description: Triennial Market Power Analysis for Northeast Region of Wheelabrator Portsmouth Inc., et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5440.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER11–2508–028; ER19–1411–002; ER19–1414–004; ER19–1415–004; ER19–1417–003; ER19–1865–002; ER19–1866–002; ER19–1867–002; ER19–1868–002; ER19–1869–002; ER19–1870–002; ER19–1871–002; ER19–1872–002; ER19–2140–003; ER19–2141–003; ER19–2142–003; ER19–2143–003; ER19–2144–003; ER19–2145–003; ER19–2146–003; ER19–2147–003; ER19–2148–004; ER20–1887–002; ER21–568–001; ER21–573–003; ER21–574–003; ER21–575–003; ER21–577–003; ER21–578–003.

Applicants: Morgantown Station, LLC, Morgantown Power, LLC, Lanyard Power Marketing, LLC, Dickerson Power, LLC, Chalk Point Power, LLC, Lanyard Power Holdings, LLC, Chalk Point Steam, LLC, Heritage Power Marketing, LLC, Mountain Power, LLC, Warren Generation, LLC, Portland Power, LLC, Sayreville Power, LLC, Gilbert Power, LLC, Brunot Island Power, LLC, New Castle Power, LLC, Shawville Power, LLC, Tolna Power, LLC, Titus Power, LLC, Shawnee Power, LLC, Orrtanna Power, LLC, Niles Power, LLC, Hunterstown Power, LLC, Hamilton Power, LLC, Blossburg Power, LLC, GenOn Power Midwest, LP, GenOn California South, LP, GenOn REMA, LLC, GenOn Bowline, LLC, GenOn Energy Management, LLC.

Description: Triennial Market Power Analysis for Northeast Region of GenOn Energy Management, LLC, et al.

Filed Date: 6/29/23.

Accession Number: 20230629–5212.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER11–3589–007.

Applicants: Long Island Solar Farm, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Long Island Solar Farm, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5447.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER11–3642–022.

Applicants: Tanner Street Generation, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Tanner Street Generation, LLC.

Filed Date: 6/29/23.

Accession Number: 20230629–5211.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER13–760–002; ER19–430–002; ER19–2644–002; ER22–2483–001.

Applicants: Alta Farms Wind Project II, LLC, Whitney Hill Wind Power, LLC, Enel Green Power Hilltopper Wind, LLC, Canastota Windpower, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Canastota Windpower, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5441.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER13–1667–006.

Applicants: Battery Utility of Ohio, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Battery Utility of Ohio, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5453.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER15–103–013; ER22–2144–004.

Applicants: Invenergy Nelson Expansion LLC, Invenergy Nelson LLC.

Description: Triennial Market Power Analysis for Northeast Region of Invenergy Nelson LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5448.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER15–1019–009; ER15–356–016; ER15–357–016; ER19–2250–007; ER22–1418–003; ER22–2703–001.

Applicants: Pattern Energy Management Services LLC, Trailstone Renewables, LLC, TrailStone Energy Marketing, LLC, Chief Keystone Power, LLC, Chief Conemaugh Power, LLC, Fowler Ridge IV Wind Farm LLC.

Description: Triennial Market Power Analysis for Northeast Region of Fowler Ridge IV Wind Farm LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5452.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER16–2226–005.

Applicants: McHenry Battery Storage, LLC.

Description: Triennial Market Power Analysis for Northeast Region of McHenry Battery Storage, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5455.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER18–140–012.

Applicants: Lackawanna Energy Center LLC.

Description: Triennial Market Power Analysis for Northeast Region of Lackawanna Energy Center LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5449.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER18–2418–009.

Applicants: Great River Hydro, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Great River Hydro, LLC.

Filed Date: 6/29/23.

Accession Number: 20230629–5213.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER19–1795–002; ER19–1798–002; ER19–1793–002; ER19–1797–002; ER19–1796–002;

ER19–1799–002; ER11–2036–015; ER18–2327–007; ER19–902–003; ER19–1597–005; ER20–902–002; ER20–1593–005; ER20–1594–004; ER20–1596–005; ER20–1597–005; ER20–1599–005; ER20–1620–003; ER21–2767–002; ER22–414–003; ER22–1518–002; ER23–495–004; ER23–1631–001.

Applicants: Cavalier Solar A, LLC,AES CE Solutions, LLC, Laurel Mountain BESS, LLC, AES Marketing and Trading, LLC, Skipjack Solar Center, LLC, AES Solutions Management, LLC, Richmond Spider Solar, LLC, Pleinmont Solar 2, LLC, Pleinmont Solar 1, LLC, Highlander IA, LLC, Highlander Solar Energy Station 1, LLC, sPower Energy Marketing, AES Integrated Energy, LLC, Valcour Wind Energy, LLC, Riverhead Solar Farm, LLC, AES Laurel Mountain, LLC, Valcour Wethersfield Windpark, LLC, Valcour Chateaugay Windpark, LLC, Valcour Clinton Windpark, LLC, Valcour Altona Windpark, LLC, Valcour Ellenburg Windpark, LLC, Valcour Bliss Windpark, LLC.

Description: Triennial Market Power Analysis for Northeast Region of AES Laurel Mountain, LLC, et al.

Filed Date: 6/28/23.

Accession Number: 20230628–5199.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER20–879–004; ER20–1436–004; ER20–1437–004; ER20–1438–004.

Applicants: Energy Harbor Nuclear Generation LLC, Energy Harbor Generation LLC, Energy Harbor LLC, Pleasants LLC.

Description: Triennial Market Power Analysis for Northeast Region of Pleasants LLC, et al.

Filed Date: 6/29/23.

Accession Number: 20230629–5198.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER20–2755–001; ER20–2276–002; ER22–1566–004.

Applicants: Guernsey Power Station LLC, Moxie Freedom LLC, Caithness Long Island, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Caithness Long Island, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5454.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER23–1373–002.

Applicants: Hillcrest Solar I, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Hillcrest Solar I, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5451.

Comment Date: 5 p.m. ET 8/29/23.

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: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14868 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2346–000]

Oak Ridge Solar, 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 Oak Ridge Solar, 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 27, 2022.

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.

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contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14860 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–222–000.

Applicants: Orlando CoGen Limited, L.P.

Description: Orlando CoGen Limited, L.P. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 7/7/23.

Accession Number: 20230707–5016.

Comment Date: 5 p.m. ET 7/28/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1858–012; ER10–1862–040; ER10–1870–012; ER10–1889–012; ER10–1893–040; ER10–1895–012; ER10–1934–040; ER10–1938–041; ER10–1942–038; ER10–1944–012; ER10–2029–016; ER10–2036–015; ER10–2040–014; ER10–2041–014; ER10–2042–046; ER10–2043–014; ER10–2044–014; ER10–2051–014; ER10–2985–044; ER10–3049–045; ER10–3051–045; ER10–3260–014; ER11–4369–025; ER13–1401–012; ER14–2931–012; ER16–2218–026; ER17–696–026; ER18–1321–007; ER20–1939–005; ER23–944–004.

Applicants: Calpine Community Energy, LLC, Calpine Northeast Development, LLC, Calpine Mid-Merit II, LLC, Calpine Energy Solutions, LLC, North American Power Business, LLC, Calpine Fore River Energy Center, LLC, Westbrook Energy Center, LLC, North American Power and Gas, LLC, Granite Ridge Energy, LLC, Champion Energy, LLC, Champion Energy Services, LLC, Champion Energy Marketing LLC, Calpine Bethlehem, LLC, Zion Energy LLC, Calpine Mid-Atlantic Generation, LLC, Calpine Energy Services, L.P., Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Vineland Solar, LLC, Calpine Mid-Atlantic Marketing, LLC, Bethpage Energy Center 3, LLC, Calpine Construction Finance Co., L.P., Calpine Power America—CA, LLC, CES Marketing IX, LLC, KIAC Partners, CES Marketing X, LLC, CPN Bethpage 3rd Turbine, Inc., Nissequogue Cogen Partners, Power Contract Financing, L.L.C., TBG Cogen Partners.

Description: Triennial Market Power Analysis for Northeast Region of TBG Cogen Partners, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5459.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–1987–005.

Applicants: Ontario Power Generation Energy Trading, Inc.

Description: Triennial Market Power Analysis for Southeast Region of Ontario Power Generation Energy Trading, Inc.

Filed Date: 6/30/23.

Accession Number: 20230630–5469.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2201–005; ER13–291–004; ER14–1468–015; ER15–1471–014; ER15–1672–013; ER16–2010–008.

Applicants: Hancock Wind, LLC, Evergreen Wind Power II, LLC, Blue Sky West, LLC, KMC Thermo, LLC, EnergyMark, LLC, Marina Energy, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Marina Energy, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5477.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2398–014; ER10–2399–014; ER10–2406–015; ER10–2408–009; ER10–2409–014; ER10–2410–014; ER10–2411–015; ER10–2412–015; ER11–2935–016; ER13–1816–020; ER14–1933–014; ER16–1152–007; ER16–1724–012; ER17–1314–006; ER18–1189–009; ER19–1282–007; ER20–2714–005; ER22–2115–002; ER22–2116–002; ER23–1585–001.

Applicants: Riverstart Solar Park III LLC, Blue Harvest Solar Park LLC, Timber Road Solar Park LLC, Headwaters Wind Farm II LLC, Paulding Wind Farm IV LLC, Meadow Lake Wind Farm VI LLC, Arkwright Summit Wind Farm LLC, Paulding Wind Farm III LLC, Jericho Rise Wind Farm LLC, Headwaters Wind Farm LLC, Sustaining Power Solutions LLC, Paulding Wind Farm II LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm LLC, Marble River, LLC, High Trail Wind Farm, LLC, Blackstone Wind Farm II LLC, Blackstone Wind Farm, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Blackstone Wind Farm, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5489.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2435–022; ER10–2440–014; ER12–2510–012; ER12–2512–012; ER15–2013–015; ER15–2014–009; ER15–2022–008; ER15–2026–008; ER18–2252–004; ER19–481–005.

Applicants: LMBE Project Company LLC, MC Project Company LLC, Susquehanna Nuclear, LLC, Montour, LLC, Brunner Island, LLC, Talen Energy Marketing, LLC, H.A. Wagner LLC, Brandon Shores LLC, Dartmouth Power Associates Limited Partnership, Camden Plant Holdings, L.L.C.

Description: Triennial Market Power Analysis for Northeast Region of Talen Energy Marketing, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5490.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2984–063.

Applicants: Merrill Lynch Commodities, Inc.

Description: Triennial Market Power Analysis for Northeast Region of Merrill Lynch Commodities, Inc.

Filed Date: 6/30/23.

Accession Number: 20230630–5484.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER11–2335–019; ER11–3859–024; ER11–4634–011; ER14–1699–014; ER15–748–008; ER15–1456–011; ER15–1457–011; ER17–436–010; ER18–920–013; ER19–464–004; ER19–967–004; ER19–968–005.

Applicants: Manchester Street, L.L.C., Fairless Energy, L.L.C., Vermillion Power, L.L.C., Marco DM Holdings, L.L.C., Marcus Hook Energy, L.P., Syracuse, L.L.C., Beaver Falls, L.L.C., Garrison Energy Center LLC, Milford Power, LLC, Hazleton Generation LLC, Dighton Power, LLC, Dynegy Services Plum Point, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Plum Point Services Company, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5481.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER17–1037–004; ER17–1603–003; ER17–2245–003; ER19–1741–002.

Applicants: Dominion Energy South Carolina, Inc., Moffett Solar 1, LLC, Dominion Energy Generation Marketing, Inc., Innovative Solar 37, LLC.

Description: Triennial Market Power Analysis for Southeast Region of Innovative Solar 37, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5478.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER17–1315–012; ER17–2087–010; ER20–2746–006.

Applicants: Riverstart Solar Park LLC, Hog Creek Wind Project, LLC, Meadow Lake Wind Farm V LLC.

Description: Triennial Market Power Analysis for Northeast Region of Meadow Lake Wind Farm V LLC, et al.
Filed Date: 6/30/23.
Accession Number: 20230630–5486.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER17–2558–002; ER18–974–003.
Applicants: Carolina Power Partners, LLC, Ohio Power Partners, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Ohio Power Partners, LLC, et al.
Filed Date: 6/30/23.
Accession Number: 20230630–5492.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER18–552–005.
Applicants: Clean Energy Future-Lordstown, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Clean Energy Future-Lordstown, LLC.
Filed Date: 6/30/23.
Accession Number: 20230630–5485.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER21–1225–005; ER22–867–002.
Applicants: Long Ridge Retail Electric Supplier LLC, Long Ridge Energy Generation LLC.
Description: Triennial Market Power Analysis for Northeast Region of Long Ridge Energy Generation LLC, et al.
Filed Date: 6/30/23.
Accession Number: 20230630–5475.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER23–1598–000; ER23–1598–001.
Applicants: Versant Power.
Description: Versant Power submits Response to FERC's June 5, 2023, Deficiency Letter.
Filed Date: 7/5/23.
Accession Number: 20230705–5063.
Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: ER23–2351–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: Legacy Agreement Clean Up to be effective 12/18/2012.
Filed Date: 7/6/23.
Accession Number: 20230706–5106.
Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2352–000.
Applicants: Interstate Power and Light Company.
Description: § 205(d) Rate Filing: IPL-Chickasaw Wind RLBAA Filing to be effective 9/6/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5027.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2353–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Interim ISA and CSA, SA Nos. 5885 & 6969; Queue No. AF1–123/AF1–124/AF1–125 to be effective 6/7/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5028.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2354–000.
Applicants: Interstate Power and Light Company.
Description: § 205(d) Rate Filing: Prescott Wind LBA to be effective 9/6/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5029.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2355–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5833; Queue No. AC2–100/AD1–131 (amend) to be effective 9/6/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5036.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2356–000.
Applicants: FPL Energy Wyman IV LLC.
Description: Petition of FPL Energy Wyman IV LLC for Waiver of the Transmission, Markets, and Services Tariff of ISO New England, LLC.
Filed Date: 7/6/23.
Accession Number: 20230706–5146.
Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2357–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6715; Queue No. AE2–111 to be effective 1/18/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5045.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2358–000.
Applicants: Wildflower Solar, LLC.
Description: § 205(d) Rate Filing: Shared Facilities and Co-Tenancy Agreement to be effective 9/6/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5067.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2359–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6967 and ICSA, SA No. 6968; Queue Nos. AD2–100/AD2–131 to be effective 9/6/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5071.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2360–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): PowerSouth NITSA Amendment (Add Holly Hills DP) to be effective 6/7/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5074.
Comment Date: 5 p.m. ET 7/28/23.

Docket Numbers: ER23–2361–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2023–07–07—PSCoM—NITS—463—Amnd 3 to be effective 8/1/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5121.
Comment Date: 5 p.m. ET 7/28/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–55–000
Applicants: SR DeSoto III, LLC
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of SR DeSoto III, LLC.
Filed Date: 7/6/23
Accession Number: 20230706–5144
Comment Date: 5 p.m. ET 7/27/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14866 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #4

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–104–000.

Applicants: Tenaska High Point Holdings, LLC, High Point Solar LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Tenaska High Point Holdings, LLC, et al.

Filed Date: 7/6/23.

Accession Number: 20230706–5147.

Comment Date: 5 p.m. ET 7/27/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–81–000.

Applicants: Upstream Clean Energy v. California Independent System Operator Corporation.

Description: Complaint of Upstream Clean Energy v. California Independent System Operator Corporation.

Filed Date: 7/6/23.

Accession Number: 20230706–5145.

Comment Date: 5 p.m. ET 7/26/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1333–017; ER10–2566–014; ER13–2322–010; ER13–2387–011; ER15–190–022; ER18–1343–016; ER19–1819–006; ER19–1820–006; ER19–1821–006; ER21–2426–002.

Applicants: CPRE 1 Lessee, LLC, Speedway Solar NC, LLC, Stony Knoll Solar, LLC, Broad River Solar, LLC, Carolina Solar Power, LLC, Duke Energy Renewable Services, LLC, Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, Duke Energy Commercial Enterprises, Inc.

Description: Triennial Market Power Analysis for Southeast Region of Duke Energy Commercial Enterprises, Inc., et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5496.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–1616–019; ER10–1838–011; ER10–1967–012; ER10–1968–011; ER10–1990–011; ER10–1993–011; ER10–2783–020; ER10–2798–019; ER10–2799–019; ER10–2878–020; ER10–2879–019; ER10–2960–016; ER10–2969–020; ER18–1821–011; ER19–2231–008; ER19–2232–008; ER21–2423–007; ER21–2424–007; ER22–46–007; ER22–1402–004; ER22–1404–004; ER22–1449–003; ER22–1450–003; ER22–1662–003; ER22–2713–002; ER23–1299–001.

Applicants: OnPoint Energy Northeast, LLC, Parkway Generation Sewaren Urban Renewal Entity LLC, GB II New York LLC, GB II New Haven LLC, GB II Connecticut LLC, Parkway Generation Operating LLC, Parkway Generation Keys Energy Center LLC, Parkway Generation Essex, LLC, Generation Bridge M&M Holdings, LLC, Generation Bridge Connecticut Holdings, LLC, Chief Keystone Power II, LLC, Chief Conemaugh Power II, LLC, Walleye Power, LLC, Oswego Harbor Power LLC, Astoria Generating Company, L.P., Montville Power LLC, Middleton Power LLC, Devon Power LLC, Connecticut Jet Power LLC, Arthur Kill Power LLC, Waymart Wind Farm, LLC, Somerset Windpower, LLC, Mill Run Windpower, LLC, Meyersdale Windpower LLC, Backbone Mountain Windpower, LLC, New Covert Generating Company, LLC.

Description: Triennial Market Power Analysis for Northeast Region of New Covert Generating Company, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5495.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2346–013; ER10–2353–013; ER11–4351–015; ER17–1217–003; ER19–1200–009; ER21–1923–003; ER21–1947–003; ER21–2128–002; ER21–2129–002; ER22–529–003.

Applicants: 299F2M WHAM8 SOLAR, LLC, 276FED WHAM8 SOLAR, LLC, 0HAM WHAM8 SOLAR, LLC, NedPower Mount Storm LLC, Black Rock Wind Force, LLC, Clearway Power Marketing LLC, TotalEnergies Gas & Power North America, Inc., Pinnacle Wind, LLC, Lookout WindPower LLC, Forward WindPower LLC.

Description: Triennial Market Power Analysis for Northeast Region of Forward WindPower LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5494.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER22–2963–002.

Applicants: Yellowbud Solar, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Yellowbud Solar, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5493.

Comment Date: 5 p.m. ET 8/29/23.

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: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14865 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1020–025; ER10–1078–025; ER10–1080–025; ER10–1081–026; ER10–2178–041; ER10–2179–035; ER10–2180–029; ER10–2181–037; ER10–2182–036; ER10–2192–041; ER10–3308–028; ER11–2056–023; ER13–1536–025; ER14–1524–010; ER14–2145–009; ER15–2293–004; ER16–2194–004; ER16–2708–004; ER17–2201–005.

Applicants: Constellation FitzPatrick, LLC, West Medway II, LLC, Clinton Battery Utility, LLC, Fair Wind Power Partners, LLC, Fourmile Wind Energy, LLC, Constellation Power Source Generation, LLC, Constellation Energy

Generation, LLC, Constellation Mystic Power, LLC, Criterion Power Partners, LLC, Constellation Energy Commodities Group Maine, LLC, R.E. Ginna Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, Handsome Lake Energy, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Constellation NewEnergy, Inc., Constellation Wyman, LLC, Constellation West Medway, LLC, Constellation New Boston, LLC Constellation Framingham, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Constellation Framingham, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5444.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–1511–010; ER10–2231–008.

Applicants: Kentucky Utilities Company, Louisville Gas and Electric Company.

Description: Triennial Market Power Analysis for Southeast Region of Louisville Gas and Electric Company, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5460.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–1520–012; ER10–1521–012; ER10–2611–025; ER11–2044–041; ER11–3876–028; ER13–1266–046; ER15–2211–043; ER18–1419–006; ER20–2493–007; ER22–1385–005; ER23–676–002; ER23–674–002.

Applicants: BHE Wind Watch, LLC, BHE Power Watch, LLC, BHER Market Operations, LLC., OTCF, LLC, Walnut Ridge Wind, LLC, MidAmerican Energy Services, LLC, CalEnergy, LLC, Cordova Energy Company LLC, MidAmerican Energy Company, Saranac Power Partners, L.P., Occidental Power Marketing, L.P., Occidental Power Services, Inc.

Description: Triennial Market Power Analysis for NortheastRegion of Occidental Power Services, Inc., et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5480.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–1586–011; ER10–1630–011.

Applicants: Wolf Hills Energy, LLC, Big Sandy Peaker Plant, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Big Sandy Peaker Plant, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5465.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2717–038.

Applicants: EFS Parlin Holdings, L.L.C.

Description: Triennial Market Power Analysis for Northeast Region of EFS Parlin Holdings, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5446.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–2881–040; ER10–2882–040; ER10–2883–038; ER10–2884–038; ER16–2509–009; ER17–2400–010; ER17–2401–010; ER17–2403–010; ER17–2404–010.

Applicants: SP Sandhills Solar, LLC, SP Pawpaw Solar, LLC, SP Decatur Parkway Solar, LLC, SP Butler Solar, LLC, Rutherford Farm, LLC, Georgia Power Company, Mississippi Power Company, Southern Power Company, Alabama Power Company.

Description: Triennial Market Power Analysis for Southeast Region of Alabama Power Company, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5482.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–3078–006; ER10–3079–021; ER19–2564–003.

Applicants: Hickory Run Energy, LLC, Tyr Energy, LLC, Commonwealth Chesapeake Company LLC.

Description: Triennial Market Power Analysis for Northeast Region of Commonwealth Chesapeake Company LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5458.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–3115–010.

Applicants: Waterside Power, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Waterside Power, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5466.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER10–3286–016; ER10–3299–015.

Applicants: New Athens Generating Company, LLC, Millennium Power Company LLC.

Description: Triennial Market Power Analysis for Northeast Region of New Athens Generating Company, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5473.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER11–3407–009; ER23–9–001; ER23–691–001; ER23–692–001.

Applicants: Hecate Energy Albany 2 LLC, Hecate Energy Albany 1 LLC, Doc Brown LLC, Howard Wind LLC.

Description: Triennial Market Power Analysis for Northeast Region of Howard Wind, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5457.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER12–1260–017; ER13–1793–016; ER15–1494–003; ER22–541–001; ER22–542–001; ER22–543–001; ER22–544–001; ER22–545–001.

Applicants: NSF Chaumont Site 5 LLC, NSF Chaumont Site 4 LLC, NSF Chaumont Site 3 LLC, NSF Chaumont Site 2 LLC, NSF Chaumont Site 1 LLC, Convergent Energy and Power LP, Hazle Spindle, LLC, Stephentown Spindle, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Stephentown Spindle, LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5438.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER12–1436–018; ER18–280–007; ER18–533–005; ER18–534–005; ER18–535–005; ER18–536–005; ER18–537–005; ER18–538–006; ER22–48–002.

Applicants: Gridflex Generation, LLC, Sidney, LLC, Monument Generating Station, LLC, O.H. Hutchings CT, LLC, Yankee Street, LLC, Montpelier Generating Station, LLC, Tait Electric Generating Station, LLC, Lee County Generating Station, LLC, Eagle Point Power Generation LLC.

Description: Triennial Market Power Analysis for Northeast Region of Eagle Point Power Generation LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5488.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER12–1561–005; ER15–1348–003; ER13–823–008; ER17–424–010.

Applicants: Salem Harbor Development LP, Castleton Commodities Merchant Trading L.P., Roseton Generating LLC, Rensselaer Generating LLC.

Description: Triennial Market Power Analysis for Northeast Region of Rensselaer Generating LLC, et al.

Filed Date: 6/30/23.

Accession Number: 20230630–5462.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER14–2102–004.

Applicants: Danskammer Energy, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Danskammer Energy, LLC.

Filed Date: 6/30/23.

Accession Number: 20230630–5464.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER16–29–002; ER18–234–002; ER18–236–002; ER18–237–002; ER18–238–002; ER18–239–002.

Applicants: GSP Lost Nation LLC, GSP Schiller LLC, GSP White Lake LLC, GSP Merrimack LLC, GSP Newington LLC, Greenidge Generation LLC.

Description: Triennial Market Power Analysis for Northeast Region of Greenidge Generation LLC, et al.

Filed Date: 7/3/23.
Accession Number: 20230703–5289.
Comment Date: 5 p.m. ET 9/1/23.

Docket Numbers: ER16–2278–004.
Applicants: Cube Yadkin Generation LLC.
Description: Triennial Market Power Analysis for Southeast Region of Cube Yadkin Generation LLC.
Filed Date: 6/30/23.
Accession Number: 20230630–5467.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER17–242–016; ER17–243–016; ER17–245–016; ER17–256–017; ER17–652–016.
Applicants: Lightstone Marketing LLC, Darby Power, LLC, Waterford Power, LLC, Lawrenceburg Power, LLC, Gavin Power, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Gavin Power, LLC, et al.
Filed Date: 7/3/23.
Accession Number: 20230703–5288.
Comment Date: 5 p.m. ET 9/1/23.

Docket Numbers: ER17–242–017; ER17–243–017; ER17–245–017; ER17–256–018; ER17–652–017.
Applicants: Lightstone Marketing LLC, Darby Power, LLC, Waterford Power, LLC, Lawrenceburg Power, LLC, Gavin Power, LLC.
Description: Notice of Non-Material Change in Status of Gavin Power, LLC, et al.
Filed Date: 6/30/23.
Accession Number: 20230630–5487.
Comment Date: 5 p.m. ET 7/21/23.

Docket Numbers: ER19–1281–008.
Applicants: Lexington Chenoa Wind Farm LLC.
Description: Triennial Market Power Analysis for Northeast Region of Lexington Chenoa Wind Farm LLC.
Filed Date: 6/30/23.
Accession Number: 20230630–5474.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER19–2583–002.
Applicants: Green River Wind Farm Phase 1, LLC.
Description: Triennial Market Power Analysis for Northwest Region of Green River Wind Farm Phase 1, LLC.
Filed Date: 6/30/23.
Accession Number: 20230630–5476.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER21–1755–004; ER23–1642–001.
Applicants: NE Renewable Power, LLC, Hartree Partners, LP.
Description: Triennial Market Power Analysis for Northeast Region of Hartree Partners, LP, et al.
Filed Date: 6/30/23.
Accession Number: 20230630–5472.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER22–2422–002.
Applicants: SR Turkey Creek, LLC.
Description: Triennial Market Power Analysis for Northeast Region of SR Turkey Creek, LLC.
Filed Date: 6/30/23.
Accession Number: 20230630–5470.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER22–2643–002; ER23–666–001; ER23–1967–001.
Applicants: Three Corners Prime Tenant, LLC, Foxhound Solar, LLC, Three Corners Solar, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Three Corners Solar, LLC, et al.
Filed Date: 6/30/23.
Accession Number: 20230630–5445.
Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER23–1936–000.
Applicants: Elektron Power LLC.
Description: Supplement to May 23, 2023 Elektron Power LLC tariff filing.
Filed Date: 7/5/23.
Accession Number: 20230705–5181.
Comment Date: 5 p.m. ET 7/19/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–54–000.
Applicants: DCR Transmission, L.L.C.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DCR Transmission, L.L.C.
Filed Date: 7/5/23.
Accession Number: 20230705–5183.
Comment Date: 5 p.m. ET 7/26/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14867 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2336–000]

Vineyard Wind 1 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 Vineyard Wind 1 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 27, 2022.

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: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14861 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX23–7–000]

EnerSmart Los Coches BESS LLC; Notice of Filing

Take notice that on July 7, 2023, pursuant to Section 211 of the Federal Power Act (FPA),[1] Section 9.3.3 of the San Diego Gas & Electric Company (SDG&E) Transmission Owner Tariff (TO Tariff), EnerSmart Los Coches BESS LLC (EnerSmart Los Coches) filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring SDG&E to provide interconnection and transmission services for EnerSmart Los Coches' proposed Los Coches BESS battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the SDG&E Tariffs, CAISO's Fifth Replacement FERC Electric Tariff, and the Small Generator Interconnection Agreements between EnerSmart Los Coches and SDG&E, dated April 23, 2023, as it may be in effect from time to time.[2]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* 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.

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.*

Comment Date: 5 p.m. Eastern Time on July 28, 2023.

Dated: July 07, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14857 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824j (2018).

[2] The SGIA is associated with application number W163 for one 3 MW battery energy storage facility, interconnecting at one point of interconnection, specified as (i) ''an extension of Los Coches circuit 246 from the Pole P75091.''

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: RP23–885–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Colonial eff 7–7–23 to be effective 7/7/2023.
Filed Date: 7/7/23.
Accession Number: 20230707–5050.
Comment Date: 5 p.m. ET 7/19/23.

Docket Numbers: RP23–886–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: Pro Forma—IT Feeder to FT—McMullen Lateral to be effective N/A.
Filed Date: 7/7/23.
Accession Number: 20230707–5055.
Comment Date: 5 p.m. ET 7/19/23.

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.

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: July 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14864 Filed 7–12–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0501; FR ID 154208]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), 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.

DATES: Written comments should be submitted on or before September 11, 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 contacts 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: 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.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC 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.

OMB Control Number: 3060–0501.

Title: Section 73.1942 Candidates Rates; Section 76.206 Candidate Rates; Section 76.1611, Political Cable Rates and Classes of Time.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 17,561 respondents; 403,610 responses.

Estimated Time per Response: 0.5 hours to 20 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Semi-annual requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 315 of the Communications Act of 1934, as amended.

Total Annual Burden: 927,269 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 315 of the Communications Act directs broadcast stations and cable operators to charge political candidates the ''lowest unit charge of the station'' for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

The information collection requirements contained in 47 CFR 73.1942 require broadcast licensees and the requirements contained in 47 CFR 76.206 require cable television systems to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). These rule sections also require licensees and cable TV systems to calculate the lowest unit charge. Broadcast stations and cable systems are also required to review their advertising records throughout the election period to determine whether compliance with these rule sections require that candidates receive rebates or credits.

The information collection requirements contained in 47 CFR 76.1611 require cable systems to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–14818 Filed 7–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0633, 3060–XXXX, 3060–0236, 3060–0248 and OMB 3060–0250; FR ID 154245]

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 August 14, 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: 3060–0633.

Title: Sections 74.165, 74.432 and 74.832, Filing of Station Licenses.

Form Number: N/A.

Type of Review: Revision 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 and Responses: 1,000 respondents and 1,000 responses.

Estimated Hours per Response: 0.083 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 83 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission released a Report and Order, Amendment of Parts 0, 1, 5, 73, and 74 of the Commission's Rules Regarding Posting of Station Licenses and Related Information, MB Docket No. 18–121, FCC 18–174, on December 11, 2018. In this Report and Order, the Commission eliminated rule sections 47 CFR 73.1230, 74.564, 74.664, 74.765 and 74.1265 to remove the posting information requirements from the Commission's rules. This collection is being revised to remove these rule sections from this information collection. Also, the posting information requirements are being removed from Sections 74.432 and 74.832 with this revision to the Office of Management and Budget. The remaining information collection requirements for this collection are as follows:

47 CFR 74.165 requires that the instrument of authorization for an experimental broadcast station be available at the transmitter site.

47 CFR 74.432(j) requires that the license of a remote pickup broadcast/low power auxiliary station shall be retained in the licensee's files and the address shown on the authorization.

47 CFR 74.832(j) (low power auxiliary stations) requires that the license shall be retained in the licensee's files at the address shown on the authorization.

OMB Control Number: 3060–0250.

Title: Sections 73.1207, 74.784, and 74.1284, Rebroadcasts.

Form Number: N/A.

Respondents: Businesses or other for-profit entities, Not for-profit institutions and State, local or Tribal Governments.

Type of Review: Revision of a currently approved collection.

Number of Respondents and Responses: 6,462 respondents and 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 5,506 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (R&O), In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules

for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations, MB Docket Nos. 03–185 and 22–261, FCC 23–25. The Report and Order adopted the following revision to 47 CFR 74.784(b):

47 CFR 74.784(b) states that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted. This notification shall be provided by email to *TVRebroadcast@fcc.gov,* the Media Bureau, Video Division's email box.

The information collection requirements contained in 47 CFR 73.1207 and 74.1284 remain the same. They are as follows:

47 CFR 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

47 CFR 74.1284 requires that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal. FM translator stations are low power facilities licensed for the limited purpose of retransmitting the signals of either a full power radio station or another translator station. See 47 CFR 74.1201.

OMB Control Number: 3060–0236.

Title: Section 74.703, Interference.

Form Number: N/A.

Respondents: Businesses or other for-profit entities, State, local or Tribal Governments and Not for-profit institutions.

Type of Review: Reinstatement of a previously approved collection.

Number of Respondents and Responses: 50 respondents and 50 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 100 hours.

Total Annual Cost: $100,000.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (R&O), In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations, MB Docket Nos. 03–185 and 22–261, FCC 23–25. The Report and Order adopted the following revision to 47 CFR 74.703(h):

47 CFR 74.703(h) requires in each instance where suspension of operation is required, the licensee shall submit a full report to the FCC via a Resumption of Operations notice in the Commission's Licensing and Management System (LMS) after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

The Commission is reinstating OMB control number 3060–0236 back into the Office of Management and Budget's (OMB) inventory. However, the Commission adopted on October 25, 2021, the Order (Order), In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction, GN Docket No. 12–268. The Order adopted a number of changes, including removing 47 CFR 74.703(f) and 74.703(g).

This means that collection 3060–0236 now only covers the information collection requirements covered under 47 CFR 74.703(h).

OMB Control Number: 3060–0248.

Title: Section 74.751, Modification of Transmission Systems.

Form Number: N/A.

Respondents: Businesses or other for-profit entities, Not for-profit institutions and State, local or Tribal Governments.

Type of Review: Revision of a currently approved collection.

Number of Respondents and Responses: 400 respondents and 400 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 200 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (R&O), In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations, MB Docket Nos. 03–185 and 22–261, FCC 23–25. The Report and Order adopted the following revisions to 47 CFR 74.751:

47 CFR 74.751(a) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application.

47 CFR 74.751(b)(4) requires low power TV or TV translator stations to file an application in the Commission's Licensing and Management System (LMS) on FCC Form 2100, Schedule C, requesting authorization for all antenna relocations.

47 CFR 74.751(c) provides that notwithstanding the requirement in 47 CFR 74.751(b)(4), a station may file in LMS a correction of geographic coordinates where the change is 3 seconds or fewer in latitude and/or 3 seconds or fewer in longitude, provided there is no physical change in location and no other licensed parameters are changed. An exhibit should be attached to the application(s) specifying it is a coordinate correction. Stations seeking to correct coordinates by less than 3 seconds of latitude and/or longitude may do so without paying a filing fee.

47 CFR 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization.

OMB Control Number: 3060–xxxx.

Title: Sections 74.734, 74.735, and 74.763, Electronic Filings.

Form Number: N/A.

Respondents: Businesses or other for-profit entities, Not for-profit institutions and State, local or Tribal Governments.

Type of Review: New collection.

Number of Respondents and Responses: 50 respondents and 250 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 500 hours.

Total Annual Cost: $250,000.

Needs and Uses: The Commission adopted on April 17, 2023, the Report and Order (R&O), In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations, MB Docket Nos. 03–185 and 22–261, FCC 23–25. The Report and Order adopted a number of revisions to the Commission's rules to specify electronic rather than paper submission in the following instances:

47 CFR 74.734(a)(4) requires that a notification must be made with the Commission via a Change of Control Point Notice in the Commission's Licensing and Management System (LMS) providing the name, address, and telephone number of person(s) who may be called to secure suspension of operation of a transmitter promptly should the FCC deem such action necessary.

47 CFR 74.735(c)(4) requires that all azimuth plane patterns be plotted in a PDF attachment to the application in LMS in a size sufficient to be easily viewed. 47 CFR 74.735(c)(6) requires that all azimuth plane patterns be plotted in a PDF attachment to the application in LMS in a size sufficient to be easily viewed. 47 CFR 74.735(c)(7) requires that if a matrix pattern is submitted in the LMS application form, similar tabulations must be provided as necessary in the form of a spreadsheet attachment to the application in LMS to accurately represent the pattern.

47 CFR 74.763(b) provides that in the event that causes beyond the control of the low power or translator station licensee make it impossible to continue operating, the licensee may discontinue operation for a period of not more than 30 days without further authority from the FCC. 47 CFR 74.763(b) requires that no later than the tenth day of discontinued operation, notification must be sent electronically via a Suspension of Operations Notice filing in the Commission's LMS database. In the event normal operation is restored before the end of the 30-day period, the licensee must notify the FCC of the date that normal operations resumed by filing a Resumption of Operations Notice filing in LMS. Finally, Section 74.763(b) requires that if causes beyond the control of the licensee make it impossible to comply within the allowed period, a licensee may make a request for Special Temporary Authority via LMS no later than the 30th day for such additional time as may be necessary.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–14819 Filed 7–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0057; –0061; –0087]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0057; –0061; –0087). The notices of the proposed renewal for these information collections were previously published in the **Federal Register** on May 3, 2023, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before August 14, 2023.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Certified Statement for Semiannual Deposit Insurance Assessment.

OMB Number: 3064–0057.

Forms: None.

Affected Public: FDIC-insured depository institutions.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0057]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Quarterly Certified Statement Invoice for Deposit Insurance Assessment, 12 CFR part 327 (Mandatory).	Reporting (Quarterly)	4,755	4	00:20	6,340
Total Annual Burden (Hours)					6,340

Source: FDIC.

General Description of Collection: The FDIC collects deposit insurance assessments on a quarterly basis. Each quarterly assessment is based on an insured depository institution's quarterly report of condition for the prior calendar quarter. The FDIC collects the quarterly assessment payments by means of direct debits through the Automated Clearing House network. The information collection consists of the reporting requirement associated with certifying the review by officials of the insured institutions to confirm that the assessment data are accurate and, in cases of inaccuracy, submission of corrected data. There is no change in the substance or methodology of this information collection. The change in burden is due solely to the decrease in the estimated number of respondents by 671 from the estimated 7,011 annual respondents in the currently-approved information collection to the current estimate of 6,340. The decrease in estimated respondents is the result of the drop in the total number of insured depository institutions.

2. *Title:* Summary of Deposits.

OMB Number: 3064–0061.

Forms: None.

Affected Public: FDIC-insured depository institutions.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0061]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Summary of Deposits (Mandatory)	Recordkeeping (Annual)	3,870	1	3:00	11,610
Total Annual Burden (Hours)					11,610

General Description of Collection: The Summary of Deposits (SOD) is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. All FDIC-insured institutions that operate a main office and one or more branch locations (including limited service drive-thru locations) as of June 30 each year are required to file the SOD Survey. Insured branches of foreign banks are also required to file. All data collected on the SOD submission are available to the public. The survey data provides a basis for measuring the competitive impact of bank mergers and has additional use in research on banking. There is no change in the substance or methodology of this information collection. The change in burden is due solely to the decrease in the estimated number of respondents by 429 from the estimated 4,299 annual respondents in the currently-approved information collection to the current estimate of 3,870.

3. *Title:* Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 3064–0087.

Forms: None.

Affected Public: Insured State Nonmember Banks and Savings Associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0087]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Procedures for monitoring BSA compliance, small institutions (<$500 million in total assets), 12 CFR 326.8(b)(1) and (c) (Mandatory).	Recordkeeping (Annual)	2,013	1	35:00	70,455
2. Procedures for monitoring BSA compliance, medium institutions ($500 million to $10 billion in total assets), 12 CFR 326.8(b)(1) and (c)(Mandatory).	Recordkeeping (Annual)	964	1	250:00	241,000
3. Procedures for monitoring BSA compliance, large institutions (>$10 billion in total assets), 12 CFR 326.8(b)(1) and (c) (Mandatory).	Recordkeeping (Annual)	61	1	450:00	27,450

SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

[OMB No. 3064–0087]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Total Annual Burden (Hours)					338,905

Source: FDIC.

General Description of Collection: Respondents must establish and maintain procedures designed to monitor and ensure their compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated by the Department of Treasury at 31 CFR chapter X. Respondents must also keep records evidencing that they have provided training for appropriate personnel. There is no change in the method or substance of the collection. The overall increase in burden hours is a result of economic fluctuation. In particular, the total number of respondents has increased while the hours per response remain the same.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 7, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–14823 Filed 7–12–23; 8:45 am]

BILLING CODE 6714–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MRB–2023–03; Docket No. 2023–0001; Sequence No. 22]

Regulatory Information Systems Center; Announcement of Public Listening Sessions

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: To assist with the Regulatory Information website (*Reginfo.gov*) user experience research, the Regulatory Information Systems Center (RISC) will be hosting public listening sessions. The purpose of these listening sessions is to collect public input on the usability of *Reginfo.gov.* In turn, RISC will use the input to inform future enhancements to *Reginfo.gov.*

DATES: RISC will hold web-based public listening sessions on Tuesday, August 8, 2023, from 1:00 p.m. to 3:00 p.m. Eastern Standard Time (EST) and on Thursday, August 10, 2023, from 10 a.m. to 12:00 p.m. EST.

ADDRESSES: The virtual listening sessions will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. Registration information is located on Eventbrite: *https://www.eventbrite.com/e/risc-presents-reginfo-public-comment-session-tickets-668851050497.*

In addition to the listening sessions, written public comments are being accepted via email. To submit a written public comment, send an email to *risc@gsa.gov.* Please include ''Reginfo.gov Public Comment'' in the subject line. In the body of the email, please include your name, company name (if applicable), and years of *Reginfo.gov* usage.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Wesley Weston, Senior Program Analyst, RISC, 202–251–7769 or by email at *wesley.weston@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Reginfo.gov assists users who want to find federal regulatory information and provides a variety of graphical displays constituting a ''Regulatory Dashboard.'' Users can select and identify rules under review by agency, economic significance, stage of rulemaking, or other characteristics, and compare the results for different agencies.

Reginfo.gov provides information on the following areas:

- Federal regulatory agendas and regulatory plans to include brief synopsis and timetables for action on rules that Federal departments and agencies are considering.
- Rules under review by the Office of Information and Regulatory Affairs (OIRA) prior to initial publication or final adoption are listed.
- OIRA reviews of information collections, such as forms and surveys, under the Paperwork Reduction Act (PRA), are listed together with a complete inventory of currently approved information collections.

Reginfo.gov gives the public searchable access to this information to make more transparent the activities of OIRA and Federal agencies in rulemaking and information collection.

Specifically, RISC invites public comment on the following questions:

1. On the homepage, do you find the visual graphs helpful? If not, what other tool would you recommend to present the information?
2. How do you feel about the overall navigation of the site? Do you feel the main navigation covers what you are looking for when visiting the site?
3. Do you find the current search options useful? Have you had difficulty using the search option based on its current location?
4. Do you feel the ''Contact us'' information or ''Getting help'' is easily found when visiting the site?
5. Have you been able to find answers to questions you were looking for? Did you have to use another site? Please explain.
6. How would you like real time information presented?
7. Have you used the mobile app which is available to both android and

IOS users? If so, what has been your experience with the app?

8. Overall, what information is missing when visiting this site?

9. Overall, what improvements would you suggest to make the site better?

Meeting Registration

This meeting is open to the public and will be accessible by webcast. All public attendees will need to register to obtain the meeting webcast information. All registrants will be asked to provide their name, affiliation, and email address. After registration, individuals will receive webcast access information via email.

Public Participation

The public listening sessions will start at 1:00 p.m. EST, on August 8, 2023, and 10:00 a.m. EST on August 10, 2023. The RISC team first will provide opening remarks. The meetings will then transition to public comments. Any oral comments presented should be brief and limited to the subjects described in this Notice so all participants will have an opportunity to speak.

Members of the public who wish to present oral comments must notify RISC no later than Monday, August 7, 2023, via email at *risc@gsa.gov.* The email should (1) identify specific subject(s) on which you wish to provide comments; and (2) state the organization or entity you are representing or that you are speaking as a member of the public.

Boris Arratia,

Regulatory Information Service Center Director, Office of Government-wide Policy.

[FR Doc. 2023–14842 Filed 7–12–23; 8:45 am]

BILLING CODE 6820–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''*Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.*''

DATES: Comments on this notice must be received by September 11, 2023.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The current clearance was approved on November 2, 2020 (OMB Control Number 0935–0179) and will expire on November 30, 2023. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: (1) the target population to which generalizations will be made; (2) the sampling frame; (3) the sample design (including stratification and clustering); (4) the precision requirements or power calculations that justify the proposed sample size; (5) the expected response rate; (6) methods for assessing potential nonresponse bias; (7) the protocols for data collection; (8) and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Below we provide AHRQ's projected average annual estimates for the next three years:

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 10.

Respondents: 10,900.

Annual Responses: 10,900.

Frequency of Response: Once per request.

The total number of respondents across all 10 activities each year is 10,900.

Average Minutes per Response: 19.

Burden Hours: 3,383.

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 Office of Management and Budget control number.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 10, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–14869 Filed 7–12–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a Single-Source Supplement for the Strengthening the Direct Care Workforce: A Technical Assistance and Capacity Building Initiative

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the National Council on Aging for the *Strengthening the Direct Care Workforce: A Technical Assistance and Capacity Building Initiative*. The administrative supplement for FY 2023 will be in the amount of $1,974,846, bringing the total award for FY 2023 to $3,269,466. The supplement will provide sufficient resources to enable the grantee and their partners to increase funding for technical assistance (TA) to state aging and disability partnerships to collaborate with workforce entities to strengthen the Direct Care Workforce (DCW). The funding will enable the grantee to support additional states, including at more robust levels than originally planned. The funding will also enable additional work to strengthen the self-direction workforce by identifying gaps in knowledge and highlighting best practices to support and sustain those who self-direct, for dissemination via the DCW resource hub to a national audience.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Caroline Ryan, U.S. Department of Health and Human Services, Administration for Community Living, at *caroline.ryan@acl.hhs.gov* or (202) 795–7429.

SUPPLEMENTARY INFORMATION: Through this initiative, ACL seeks to advance capacity to recruit, train and retain a high-quality, competent, and effective direct care workforce of professionals capable of meeting the growing needs that older adults and people with disabilities have for such supports. The purpose of this program is to catalyze change at a systems level that will address the insufficient supply of trained DCWs, promote promising practices at all levels of the service system and improve data collection to enable a full understanding of the workforce issue.

The outcomes of the initiative are as follows:

1. Increase the availability and visibility of tools and resources to attract, train and retain the direct care workforce in quality jobs where they earn livable wages and have voice in their working environment, and have access to benefits and opportunities for advancement.

2. Increase the number of states that develop and sustain collaborations across state systems and workforce agencies to implement strategies that will improve the recruitment, retention, and advancement of high quality DCW jobs.

Program Name: Strengthening the Direct Care Workforce: A Technical Assistance and Capacity Building Initiative.

Recipient: The National Council on Aging.

Period of Performance: The supplement award will be issued for the second year of the five-year project period of September 30, 2022 through September 29, 2027.

Total Award Amount: $3,269,466 in FY 2023.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: Section 411(13) of the Older Americans Act, Section 161 (2) of the Developmental Disabilities Assistance and Bill of Rights Act, and Section 21 program of the Rehabilitation Act of 1973.

Basis for Award: The National Council on Aging is currently funded to carry out the objectives of the project entitled *Strengthening the Direct Care Workforce: A Technical Assistance and Capacity Building Initiative* the period of September 30, 2022 through September 29, 2027. This supplement will enable the grantee to carry their work even further, providing technical assistance to more state partnerships and support additional work to strengthen the self-direction workforce. The NCOA is uniquely positioned to complete the work called for under this project. NCOA's partners on this project include the University of Minnesota Institute on Community Integration (ICI), National Association of Councils on Developmental Disabilities (NACDD), Paraprofessional Healthcare Institute (PHI), DiverseAbility, Lincoln University Cooperative Extension Paula J. Carter Center on Minority Health and Aging (PJCCMHA), Green House Project Center for Innovation (GHP), Housing Innovations (HI), National Alliance for Caregiving (NAC), the Rockingstone Group (Rockingstone), and Social Policy Research Associates (SPR). Establishing an entirely new grant project at this time would be potentially disruptive to the current work already well under way. If this supplement is not provided, the project would be unable to expand its current technical assistance and training efforts to reach more state partnerships across aging, disability and workforce stakeholders to work together to strengthen the direct care workforce.

Dated: July 8, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–14828 Filed 7–12–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a Single-Source Supplement for the National Volunteer Care Corps Program

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the Oasis Institute for the project *National Volunteer Care Corps*.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Sherri Clark Link, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Office of Supportive and Caregiver Services: telephone (202)–795–7327; email *sherri.clark@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this program was to establish a new grant program that will test models of programming designed to place volunteers in communities to assist caregivers, older adults, and persons with disabilities in maintaining independence by providing non-medical care. The overall goals of the program are to:

- Add to the nation's capacity to support volunteer programs that provide non-medical care to assist caregivers, older adults, and/or persons with disabilities; and

• Advancing innovative models that support local volunteer programs that provide non-medical care to assist caregivers, older adults, and/or persons with disabilities.

Since inception of the National Volunteer Care Corps project, the Oasis Institute has supported 75 local projects around the country providing services to over 22,000 people. Several innovative models have emerged since the establishment of the program. ACL is interested in concentrating attention on a special volunteer model that is focused around building a network of screened and trained volunteer chaperones to accompany older adults and adults with disabilities in need to and from non-emergency medical appointments and outpatient procedures. The administrative supplement for FY 2023 will be in the amount of $1,337,500 and will provide sufficient resources to enable the grantee to establish a grant category that will fund efforts that target the volunteer chaperone volunteer model.

Dated: July 8, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–14830 Filed 7–12–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a Single-Source Supplement for the National Center for Benefits Outreach and Enrollment (NCBOE)

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplemental to the current cooperative agreement held by the National Council on Aging (NCOA) for the National Center for Benefits Outreach and Enrollment (NCBOE). The purpose of the NCBOE is to provide technical assistance to states, Area Agencies on Aging, Aging and Disability Resource Centers and service providers who conduct outreach and low-income benefits enrollment assistance, particularly to older individuals with greatest economic need for federal and state programs. The administrative supplement for FY 2023 will be for $1,932,521, bringing the total award for FY 2023 to $13,432,521.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Margaret Flowers, U.S. Department of Health and Human Services, Administration for Community Living, Center for Innovation and Partnership, Office of Healthcare Information and Counseling; telephone (202) 795–7315; email *Margaret.flowers@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: This supplemental funding will expand the NCBOE's outreach and education efforts targeting older adults with the greatest economic need, especially people from underserved communities. The NCBOE will build on current efforts to reach and assist beneficiaries, including expanding the work of the Benefits Enrollment Centers, making enhancements to the benefits eligibility and screening tool, and expanding the capacity of the benefits call center.

With this supplemental funding, the NCBOE will develop specialized training and tools related to retirement security for older adults with low and moderate incomes. This work will build on current efforts to reach and assist beneficiaries with benefits by expanding on the retirement security project begun in 2023. This may include but is not limited to activities such as developing materials, providing technical assistance, and conducting a pilot with select community-based organizations. As part of this work, the NCBOE should reflect on the equity assessment conducted in 2021 to identify specific strategies to reach and enroll beneficiaries in rural communities, who are under 65, with limited English proficiency, from tribal communities, from communities of color, and/or from other historically underserved and marginalized communities. The NCBOE should collaborate with ACL and the administration to coordinate planned and emerging efforts to help older adults with low and moderate incomes with retirement planning. The NCBOE will continue, expand, and complete the work they are currently undertaking with the NCBOE award without disrupting services.

Program Name: The National Center for Benefits Outreach and Enrollment (NCBOE).

Recipient: National Council on Aging (NCOA).

Period of Performance: The award will be issued for the current project period of September 1, 2023 through August 31, 2024.

Total Award Amount: $13,432,521 in FY 2023.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: The statutory authority is contained in the 2006 Reauthorization of the Older Americans Act and the Medicare Improvements for Patients and Providers Act of 2008, as amended by the Patient Protection and Affordable Care Act of 2010, and reauthorized by the American Taxpayer Relief Act of 2012, Protecting Access to Medicare Act of 2014, Bipartisan Budget Act of 2018, and Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and Consolidated Appropriations Act of 2021.

Basis for Award: The National Council on Aging (NCOA) is currently funded to carry out the NCBOE Project for the period of September 1, 2020 through August 31, 2025. Much work has already been completed and further tasks are currently being accomplished. It would be unnecessarily time-consuming and disruptive to the NCBOE project and the beneficiaries being served for ACL to establish a new grantee at this time when critical services are presently being provided in an efficient manner.

NCOA is uniquely placed to complete the work under the NCBOE grant. Since 2001, NCOA has been the national leader in improving benefits access to vulnerable older adults. They have an unparalleled history of working with community-based organizations to develop and replicate outreach and enrollment solutions while maintaining and enhancing technology to make it easier and more efficient to find benefits. NCOA through NCBOE accomplishes its mission by developing and sharing tools, resources, best practices, and strategies for benefits outreach and enrollment via its online clearinghouse, electronic and print publications, webinars, and training and technical assistance.

In addition, NCOA has BenefitsCheckUp which is, by far, the nation's most comprehensive and widely-used web-based service that screens older and disabled adults with limited incomes and resources and informs them about public and private benefits for which they are very likely to be eligible. Since the BenefitsCheckUp was launched in 2001, nearly 9.9 million people have discovered over $42 billion in benefits. In addition to the focus on Low-Income Subsidy and Medicare Savings Programs, BenefitsCheckUp also includes more than 2,500 benefits programs from all 50 states and DC, including over 50,000 local offices for people to apply for benefits; and more than 1,500 application forms in every language in which they are available. NCOA is successfully meeting all programmatic goals under the current NCBOE grant.

Dated: July 8, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–14831 Filed 7–12–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 88 FR 10124–10125 dated February 16, 2023).

This reorganization updates the functions within the Maternal and Child Health Bureau, Maternal and Child Health Workforce Development.

Chapter RM—Maternal Child Health Bureau

Section RM.20 Function

Delete the functional statement for the Maternal and Child Health Bureau (RM), Division of Maternal and Child Health Workforce Development (RM4) in its entirety and replace with the following:

Division of Maternal and Child Health Workforce Development (RM4)

The Division of Maternal and Child Health Workforce Development provides national leadership and direction in educating and training our nation's current and future leaders in maternal and child health (MCH). The Division also provides leadership through state and community-based capacity building programs. Special emphasis is placed on the development and implementation of interprofessional, family- and person-centered, community-based and culturally responsive systems of care across the life course.

The Division supports programs established and/or expanded in federal law to complement state and local health efforts. The Division partners with state MCH programs, academic institutions, professional organizations, and other health training programs of the federal government to ensure that the MCH workforce development programs are grounded in emerging and evidence-based practices. Specifically, the Division carries out the following activities related to these programs: (1) supports a continuum of training investments to develop MCH leaders at the undergraduate, graduate, and post-graduate levels and workforce development investments for practicing professionals in the areas of public health, clinical practice, teaching, research, and/or administration/policy designed to promote and improve the health and well-being of infants, children, adolescents, children with special health care needs, and transition-age youth and young adults; (2) provides grants that support innovative, community-based initiatives to improve the health of infants, children, adolescents, and their families in rural and other underserved communities by increasing access to preventive care and services; (3) develops policies and guidelines and promotes standards through professional and public education and training activities for the Bureau; (4) develops, coordinates and implements technical assistance and consultation to state and local agencies and organizations or groups concerned with the promotion of health and prevention of disease among infants, children, adolescents, children with special health care needs, and transition-age youth and young adults; (5) provides national guidance and leadership in addressing MCH public health workforce needs; (6) accounts for the administration of funds and other resources for grants, contracts, cooperative agreements and programmatic consultation and assistance; (7) coordinates with other Maternal and Child Health Bureau divisions and offices in promoting program objectives and the mission of the Bureau; (8) provides liaison with public, private, professional and voluntary organizations on programs and activities; (9) disseminates information and resources on its training and workforce development activities grantees, partners, and stakeholders; and (10) participates in the development of strategic plans, regulatory activities, policies, legislative proposals, and budget submissions.

Section RM.30 Delegation of Authority

All delegations of authority and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, if allowed, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

(Authority: 44 U.S.C. 3101)

Carole Johnson,

Administrator.

[FR Doc. 2023–14845 Filed 7–12–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Enhancing Systems of Care for Children With Medical Complexity Coordinating Center Funding Supplement

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Announcing supplemental funding for Enhancing Systems of Care for Children with Medical Complexity Coordinating Center.

SUMMARY: HRSA will provide supplemental funding to the Enhancing Systems of Care for Children with Medical Complexity Coordinating Center during fiscal year 2023 to provide training, resources, and education to support states in their efforts to sustainably finance patient/family centered health care homes for children with medical complexity (CMC).

FOR FURTHER INFORMATION CONTACT: Anna Maria Padlan, Public Health Analyst, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, at *APadlan@hrsa.gov* and 301–443–1737.

SUPPLEMENTARY INFORMATION:

Intended Recipient(s) of the Award: AcademyHealth.

Amount of Non-Competitive Award(s): $450,000/year. Supplemental funding for similar activities may be considered in fiscal year 2024, subject to availability of funding for the activity and satisfactory performance of the recipient.

Project Period: September 1, 2023, to August 31, 2024.

Assistance Listing (CFDA) Number: 93.110.

Award Instrument: Supplement for Services.

Authority: Social Security Act, Title V, Section§ 501(a)(2) (42 U.S.C. 701(a)(2).

TABLE 1—RECIPIENT AND AWARD AMOUNT

Grant No.	Award recipient name	City, state	Award amount
UJ6MC45789	AcademyHealth	Washington, DC	$450,000

Justification: The Enhancing Systems of Care for Children with Medical Complexity Coordinating Center provides national leadership through training, support, and education to five demonstration projects implementing patient/family centered models of care delivery. Additional funding is needed to create consistent and sustainable policies, strategies, and partnerships that every state can adapt when providing access to a patient and family centered health care home for all CMC and their families. Most CMC do not have access to high quality patient-centered care focused on their complex care needs and one key reason is lack of sustainable financing of these care models. As a result of this supplemental funding, (1) more states will receive training, education and resources to provide stable and sufficient financing for patient and family centered health care homes for all CMC; (2) common measures will be developed for use across federal programs; and (3) state and jurisdictional Title V programs will be better positioned to work with state Medicaid agencies regarding the needs of the maternal and child health population, especially children and youth with special health care needs/CMC. Because of the current grantee's work in Medicaid financing, implementation science, and the CMC population, they are best positioned to work with state Title V and Medicaid programs, as well as families, clinicians, health care organizations, and other stakeholders, to support state Medicaid and Title V agencies in their efforts.

HRSA will award $450,000 to the award recipient noted in Table I.

Carole Johnson,

Administrator.

[FR Doc. 2023–14870 Filed 7–12–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board Public Meeting

AGENCY: Administration for Strategic Preparedness and Response (ASPR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Biodefense Science Board (NBSB) will publicly meet using an online format. Notice of the meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act (FACA). The NBSB provides expert advice and guidance to HHS regarding current and future chemical, biological, radiological, and nuclear threats, as well as other matters related to disaster preparedness and response. ASPR manages and convenes the NBSB on behalf of the Secretary of HHS.

DATES: Monday, August 28, 2023 (1 p.m.–3 p.m. ET).

FOR FURTHER INFORMATION CONTACT: Dr. Lara Lamprecht, National Advisory Committees (NAC) Branch Chief; NBSB Designated Federal Official, (202) 578–7321; *NBSB@HHS.GOV.*

SUPPLEMENTARY INFORMATION:

Procedures for Public Participation: The public and expert stakeholders are invited to observe the meeting. Pre-registration (Zoom) is required. Anyone may submit questions and comments to the NBSB by email (*NBSB@hhs.gov*) before the meeting. American Sign Language translation and Communication Access Real-Time Translation will be provided.

Representatives from industry, academia, health professions, health care consumer organizations, non-Federal Government agencies, or community-based organizations may request up to seven minutes to speak directly to the Board. Requests to speak to the Board will be approved in consultation with the Board Chair and based on time available during the meeting. Requests to speak to the NBSB during the public meeting must be sent to *NBSB@hhs.gov* by close of business on August 14, 2023. Please provide the full name, credentials, official position(s), and relevant affiliations for the speaker and a brief description of the intended topic. Presentations that contain material with a commercial bias, advertising, marketing, or solicitations will not be allowed. A meeting summary will be available on the NBSB website post meeting.

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2023–14838 Filed 7–12–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings of the National Institute of Environmental Health Sciences.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of NIEHS Pathway to Independence Award K99/R00.

Date: August 8, 2023.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Alfonso R. Latoni, Ph.D., Chief and Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984–287–3279, *alfonso.latoni@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Time-Sensitive Research Opportunities in Environmental Health Sciences.

Date: August 11, 2023.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Alfonso R. Latoni, Ph.D., Chief and Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences,

Research Triangle Park, NC 27709, 984–287–3279, *alfonso.latoni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 10, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14846 Filed 7–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0044]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Action on an Approved Application or Petition

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 14, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0012. All submissions received must include the OMB Control Number 1615–0044 in the body of the letter, the agency name and Docket ID USCIS–2007–0012.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000. (This is not a toll-free number; comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 4, 2023, at 88 FR 19970, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0012 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection is used to request a duplicate approval notice, as well as to notify and to verify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–824 is 10,571 and the estimated hour burden per response is 0.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,488 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,361,016.

Dated: July 7, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–14817 Filed 7–12–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0057]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Certificate of Citizenship

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 11, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0057 in the body of the letter, the agency name and Docket ID USCIS–2006–0023. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0023.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2006–0023 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Form N–600 collects information from applicants who are requesting a Certificate of Citizenship because they acquired United States citizenship either by birth abroad to a U.S. citizen parent(s), adoption by a U.S. citizen parent(s), or after meeting eligibility requirements including the naturalization of a foreign-born parent. Form N–600 can also be filed by a parent or legal guardian on behalf of a minor child. The form standardizes requests for the benefit and ensures that basic information required to assess eligibility is provided by applicants. USCIS uses the information collected on Form N–600 to determine if a Certificate of Citizenship can be issued to the applicant. Citizenship acquisition laws have changed over time and different laws apply to determine whether the applicant automatically became a U.S. citizen depending on the dates of relevant events, such as the child's date of birth. USCIS may request that applicants who reside within the United States attend an appointment at a USCIS Application Support Center to have a photograph taken. USCIS may also require applicants to submit additional biometrics under 8 CFR 103.2(b)(9).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–600 (paper-filed) is 26,810 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents for the information collection N–600 (online filing) is 28,190 and the estimated hour burden per response is 0.75 hours; the estimated total number of respondents for the information collection biometrics submission is 36,500 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 104,063 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,081,250.00.

Dated: July 7, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–14815 Filed 7–12–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6381–N–01]

Improving Access to Public Benefit Programs; Request for Comment

AGENCY: Office of Policy Development and Research, Department of Housing and Urban Development, HUD.

ACTION: Request for comments.

SUMMARY: The Department of Housing and Urban Development is seeking comments from the public regarding the burden faced when applying for or maintaining eligibility for HUD's housing programs. HUD recognizes that these administrative hurdles and paperwork burdens disproportionately fall on the most vulnerable populations and prevent individuals and entities from accessing benefits for which they are legally eligible. Public comment submitted in response to this request for comment will assist HUD in better understanding, identifying, and reducing HUD's public program administrative burden and ultimately further its mission to pursue transformative housing and community-building policies and programs.

DATES: Comment Due Date: August 14, 2023.

ADDRESSES: Interested persons are invited to submit comments responsive to this request for comment. There are three methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically through *www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through *www.regulations.gov* can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

3. Submission of Comments by Electronic Mail. Comments may be submitted by electronic mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development at *improving accesstopublicbenefitprograms@hud.gov.*

Note: To receive consideration as a public comment, comments must be submitted through one of the three methods specified above.

Public Inspection of Public Comments. Copies of all comments submitted will be available for inspection and downloading at *www.regulations.gov.* HUD will also make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Todd Richardson, General Deputy Assistant Secretary, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8100, Washington, DC 20410, telephone 202–402–5706 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Applying for and maintaining eligibility for public benefits and services, including housing programs, often requires completing and submitting a variety of forms. HUD and its housing partners that administer its programs (including Public Housing Authorities, State and local governments, non-profit recipients of CDBG programs, Multifamily Housing owners, and FHA lenders) use the information collected by these forms to determine whether applicants are eligible or if current recipients continue to be eligible. These forms and other methods of information collections may create burdens that disproportionately fall on the most vulnerable populations and prevent individuals and entities from accessing services for which they are legally eligible. These burdens include the expenditure of time, effort, or financial resources to generate, maintain, or provide information to HUD or its housing partners. For example, individuals may be required to provide a list of family members, the family's total annual family income, the assets available to each family member in the household, and the value of such assets in order to access public housing. Individuals applying for or maintaining eligibility for public benefits or services may also face burdens such as time spent gathering records and documentation needed to prove eligibility, travel time associated with developing and submitting the collection, or even time waiting to speak with agency personnel.

Consistent with the Paperwork Reduction Act of 1995 (PRA),[1] agencies must ensure that both the quantitative burden estimates and the narrative description supporting its information collection requests reflect the beginning-to-end experience of completing the information collection activity. Specifically, the burden faced by individuals applying for and maintaining eligibility for public benefits should also include:

—Information and learning costs, which refer to the time, effort, money, and other resources that individuals need to expend to learn about the existence of a public service or benefit, rules governing their eligibility and application, certification, benefits maintenance, and post-award reporting or recertification processes.

—Compliance costs, which refer to the time, effort, money, and other resources that individuals need to expend to follow through with program application, certification, or recertification, including filling out necessary paperwork, waiting for correspondence from program agencies, planning for in-person meetings, and producing documentation to confirm their eligibility (for instance, records of household composition, income, or assets).

[1] Public Law 104–13 (1995) (codified at 44 U.S.C. 3501–3520).

—Psychological costs, which refer to the cognitive load, discomfort, stress, anxiety, distrust, or loss of autonomy or dignity that individuals may experience as a result of attempting to access a public benefit or service.

—Redemption costs, which refer to the time, effort, money, and other resources that individuals need to expend to use public benefits or services where beneficiaries or participants must navigate third-party agents or vendors.

Every step in applying for or maintaining eligibility for public benefits represents a burden that could result in individuals or entities justifiably becoming too discouraged to complete the process and thus not receiving public benefits for which they are legally eligible.

II. Improving Access to Public Benefits Programs Through the Paperwork Reduction Act (OMB M–22–10)

On April 13, 2022, OMB issued a memorandum entitled, ''Improving Access to Public Benefits Programs Through the Paperwork Reduction Act'' (OMB M–22–10),[2] to assist Federal agencies to, among other things, reduce administrative burdens on individuals when accessing public benefits programs.[3] OMB M–22–10 discusses how the process of understanding, completing, and submitting forms associated with public benefits can impose burdens on potential beneficiaries ''that could result in individuals or entities justifiably becoming too discouraged to complete the process and thus not receiving public benefits for which they are legally eligible.'' OMB M–22–10 recognizes that burdens that seem minor when designing and implementing a program can have substantial negative effects for individuals already facing scarcity.[4]

Through Federal agencies' PRA processes, OMB M–22–10 encourages agencies to (1) more completely and transparently articulate burdens experienced by the public when accessing public benefits programs and (2) use that analysis to minimize Federal information collection burdens, with particular emphasis on those individuals and entities most adversely affected by these burdens, particularly for historically underserved communities. OMB M–22–10 also calls on Federal agencies to emphasize systematic, rather than one-off, public program administrative burden reduction initiatives, including reviewing if every burden identified in an information collection request is strictly necessary under the relevant authorizing statute or program implementation regulation.

III. Purpose of This Request for Comment

HUD's overarching goal is to pursue transformative housing and community-building policy and programs. To accomplish this goal and continue its efforts to reduce administrative burden, improve the customer experience for individuals seeking and receiving HUD services, and actively solicit input of program beneficiaries, HUD is soliciting comment to better understand, identify, and reduce the public program administrative burdens imposed through HUD's forms and other information collections that are experienced by members of the public who are entitled to benefits through one or more HUD public benefits programs.[5] While certain HUD programs impose administrative burdens directly from HUD onto members of the public, much of HUD's work involves providing funding to State, local, or Tribal governments, grant recipients, nonprofits, businesses, or other entities that then provide a benefit to eligible members of the public through a program or service, often with the requirement that information be collected to satisfy HUD program compliance requirements in addition to their own and those of other Federal agencies. Given that HUD commonly provides funding for benefits but does not directly administer the programs or services to the public, HUD also invites public input relating to how HUD can reduce its program compliance information collection requirements for administrators of HUD funding, as well as how HUD might encourage administrators of HUD-funded programs or services to reduce their own public program administrative burden. HUD's specific questions regarding better understanding, identifying, and reducing public program administrative burdens are provided in the following section.

IV. Specific Information Requested

While HUD welcomes all comments relevant to better understanding, identifying, and reducing the public program administrative burdens relating to HUD public benefits programs, HUD is particularly interested in receiving input on the questions listed below. To assist commenters, HUD provides the following guidance:

What do we mean by ''form''?

When we ask the questions about ''forms'' we mean both paper forms as well as online or electronic forms such as web applications. This includes situations where you may verbally provide your responses instead of physically completing a form, such as through an in-person or phone-based interview. HUD is interested in forms produced directly by HUD as well as forms that are created by HUD program administrators (*e.g.,* Public Housing Authorities, State and local governments, non-profit recipients of CDBG and CDBG–DR programs, Multifamily Housing owners, FHA lenders, Continuums of Care) that are, at least in part, implementing HUD requirements.

What types of experiences with forms are we interested in learning about and what is helpful information to provide?

HUD is interested in hearing about your experiences related to applying for or accessing HUD programs and services as well as experiences related to maintaining eligibility for those services, which might include activities like ongoing reporting requirements or recertification activities. While HUD is interested in input from all commenters, comments from organizations that provide direct assistance to individuals navigating application, reporting, and recertification processes, as well as individuals' direct experience completing and submitting forms, may be particularly helpful in identifying both unduly burdensome processes as well as opportunities for mitigating those burdens.

HUD is interested in understanding circumstances regarding burdens associated with completing or submitting a form or set of forms as well as suggestions for where there are opportunities for improving the form or experience by improving the requirements, phrasing, design, or associated processes with the form. To your best ability, please describe in detail what makes specific forms burdensome or difficult to you, your

[2] Available at *https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-10.pdf.*

[3] As used in OMB M–22–10, ''public benefits programs'' is construed widely to include social welfare programs; social insurance programs; tax credits; and other cash, loan, or in-kind assistance, particularly those intended to support in-need individuals or communities.

[4] *See, e.g.,* Office of Management and Budget, Study to Identify Methods to Assess Equity: Report to the President (July 2021), available at *https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-Report-on-E013985-Implementation_508-Compliant-Secure-v1.1.pdf.*

[5] As used in this request for comment, ''HUD public benefits programs'' refers generally to any HUD program or service that benefits eligible members of the public.

organization, or your organization's clients. If you are able, please identify the name of the form, the form number, or provide a link to where the form is hosted.

When providing comments, please indicate the specific question number to which you are responding.

1. How can HUD reduce its public program administrative burden across HUD's public benefits programs? Specifically, is there information currently being collected by HUD or HUD program administrators (*e.g.,* Public Housing Authorities, State and local governments, non-profit recipients of CDBG programs, Multifamily Housing owners, FHA lenders) that have no apparent use or benefit or can be streamlined? Additional prompts commenters' may wish to consider when developing their response to this question:

a. Are there eligibility requirements or questions on a form for a specific benefit or program that are particularly difficult to understand, respond to effectively, demonstrate initial compliance with, or maintain compliance with?

b. Does the form include documentation requirements that could be made simpler, less frequent, or more helpful or flexible to meet the ability of respondents to gather the documentation?

c. Does completing the form involve multiple touchpoints with either agency or third-party personnel, such as through calls to help lines, in-person visits or consultations, or solicitation of help from other non-profit, legal aid, private legal counsel, or social service agencies?

d. Are there significant discrepancies in how certain forms are implemented across States, localities, housing authorities, or other HUD program administrators responsible for collecting this information? Could HUD provide more standardized or template form or web application tools to reduce the need for non-Federal program administrators to develop their own forms or web applications?

e. Are there specific challenges that persons with physical, speech, other communication-related, or other disabilities face in these processes that HUD should further address? What strategies or tools might succeed in reducing burden for these groups?

f. Are there specific challenges that persons with limited English proficiency (LEP) face in these processes that HUD should further address? What strategies or tools might succeed in reducing burden for these groups?

g. What specific challenges or barriers are experienced by other vulnerable sub-populations that may prevent individuals and entities from accessing benefits for which they are eligible? What strategies or tools might succeed in reducing burden for these groups?

2. Are there data currently collected by HUD or HUD program administrators that could be shared with other agencies or program administrators to reduce the information collection burden of those programs? Are there data currently collected by other programs or agencies that if shared with HUD or HUD's program administrators could reduce the information collection burden of HUD's programs? When responding, please be specific about HUD and other agency programs, including the form(s) used by HUD or the other agency and the specific data collected that could be leveraged.

3. Are there data collected by HUD that are not currently aggregated and shared publicly that should be aggregated and shared publicly to increase the value of those data being collected? Please be specific about which data, the form number on which it is collected, and how HUD might aggregate the data to be useful for the public.

4. How can HUD use artificial intelligence, machine learning, or other advanced data science tools to automate, augment, or otherwise streamline its various information collections and the processes they support? Please identify which collections or processes could be improved using these tools; how advanced data science tools could help to complete these forms or processes more quickly and without sacrificing accuracy or security or perpetuating bias against certain populations; and any estimated time or cost savings that could result from these improvements. Potential responses could include but are not limited to processes related to development approval, processing of multifamily mortgage insurance applications, and reviews of applications submitted in response to notices of funding opportunities.

5. Please provide any other input relating to how HUD can better understand, identify, and reduce the public program administrative burden associated with HUD's public benefits programs, including how HUD might better use technology to support data collection and data sharing.

Todd Richardson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2023–14634 Filed 7–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7066–N–09]

60-Day Notice of Proposed Information Collection: CDBG–PRICE Competition Application Collection; OMB Control No.: 2506–New

AGENCY: Office for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 11, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *PaperworkReductionActOffice@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587 x5539. Facsimile inquiries may be sent to Ms. Jessie Handforth Kome at 202–708–0033. Except for the ''800'' number, these telephone numbers are not toll-free. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://*

www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: CDBG–PRICE Competition Grant Program (Manufactured Housing Community Improvement Grant Program) Application Collection.

OMB Approval Number: 2506-new.

Type of Request: New Collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD is issuing this NOFO under the authority of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328, enacted December 29, 2022) to collect applications for the preservation and revitalization of manufactured housing and eligible manufactured housing communities (including pre-1976 mobile homes).

Respondents: State, tribal and local governments; manufactured housing communities, cooperatives, non-profit entities, and Community Development Finance Institutions.

Estimated Number of Respondents: 100+.

Estimated Number of Responses: 100.

Frequency of Response: 1.

Average Hours per Response: 20.

Total Estimated Burdens: 2,000.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
See above	100	1	100	20	2,000	$46.58	$93,700

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35. Principal Deputy Assistant Secretary for Community Planning and Development, Marion McFadden, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Aaron Santa Anna,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2023–14836 Filed 7–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6397–N–01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG–DR) and Community Development Block Grant Mitigation (CDBG–MIT) Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG–DR) and Community Development Block Grant mitigation (CDBG–MIT) funds awarded under several appropriations acts identified in the Table of Contents. This notice revises the period of performance and budget period for some grants and allows HUD to extend the period of performance and budget periods administratively for some grants.

DATES: Applicability Date: July 18, 2023.

FOR FURTHER INFORMATION CONTACT: Tennille Parker, Director, Office of Disaster Recovery, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority To Grant Waivers and Alternative Requirements
II. Public Law 113–2 Statutory Extensions
III. Public Law 114–113, 114–254, 115–31, 115–56, 115–123, 115–254, and 116–20 Waiver and Alternative Requirements

I. Authority to Grant Waivers and Alternative Requirements

Each of the appropriations acts cited in the Table of Contents authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

The waivers and alternative requirements in this notice are designed to create expediency for CDBG–DR and CDBG–MIT grantees related to extending expenditure deadlines. Allowing grantees the flexibility to receive extensions administratively will continue to support a swift recovery following eligible disasters, while ensuring that grantees have enough time to complete projects and that statutory requirements are met. Additionally, these waivers and alternative requirements are consistent with the in 2 CFR part 200 that Federal awards include a period of performance and a budget period. Based on these reasons, the Department has determined that good cause exists for the waiver and alternative requirement authorized in this notice, and that the waivers or alternative requirements are not

inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA).

II. Public Law 113–2 Statutory Extensions

Statutory extensions for grants made available under Public Law 113–2.

Following two short-term statutory extensions (Pub. L. 116–260 and Pub. L. 117–103), section 420(a) of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2023 (Pub. L. 117–328) provided that CDBG–DR grant obligations made before September 30, 2017 from funds made available under Public Law 113–2 are to remain available until expended. The requirements at 2 CFR 200.211(b) require all Federal awards to include a period of performance and budget period. Therefore, HUD is revising the period of performance and budget period for open Federal awards made under Public Law 113–2 with an end date of September 30, 2029, when permissible under other applicable requirements that govern the use of funds under Public Law 113–2. The projections reported by Public Law 113–2 grantees indicate that this period is sufficient to allow for the full expenditure of any remaining grant funds.

HUD may extend the time period in this alternative requirement and associated grant period of performance and budget period administratively, when permissible under other applicable requirements that govern the use of funds under Public Law 113–2, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee for appropriate programmatic purposes will be recaptured by HUD.

III. Public Law 114–113, 114–254, 115–31, 115–56, 115–123, 115–254, and 116–20 Waivers and Alternative Requirements

Waiver and alternative requirement modification to allow HUD to extend certain grantee's period of performance administratively.

The **Federal Register** notices governing the use of funds for disasters occurring in 2015 and 2016 under Public Laws 114–113, 114–254, and 115–31 require each grantee to expend 100 percent of its total allocation of CDBG–DR funds on eligible activities within six years of HUD's execution of the grant agreement. The provisions governing the timely distribution of funds for these CDBG–DR appropriations can be found in the following **Federal Register** notices: June 17, 2016 (81 FR 39702) and November 21, 2016 (81 FR 83268).

Additionally, Public Laws 115–56 and 115–123, as amended, require that CDBG–DR funds for disasters occurring in 2017, 2018, and 2019 be expended within two years of the date that HUD obligates funds to a grantee, but also authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has waived this requirement for a combined total of $35,390,000,000 of CDBG–DR funds appropriated under these acts. However, the **Federal Register** notices governing the use of those funds require each grantee to expend 100 percent of its total allocation of CDBG–DR funds on eligible activities within six years of HUD's initial obligation of funds. The provisions governing the timely distribution of funds for these CDBG–DR appropriations can be found in the February 9, 2018 (83 FR 5860) in the **Federal Register** notice.

Additionally, the **Federal Register** notices governing the use of CDBG–MIT funds require each grantee to expend fifty percent of its CDBG–MIT grant on eligible activities within six years of HUD's execution of the grant agreement and one hundred percent of its grant within twelve years of HUD's execution of the agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD. The provisions governing the timely distribution of funds for these CDBG–MIT funds can be found in the August 30, 2019 (84 FR 45862) **Federal Register** notice.

The **Federal Register** notices governing the use of CDBG–DR funds under Public Laws 114–113, 114–254, 115–31, 115–56, 115–123, 115–254, and 116–20 require each grantee to expend 100 percent of its CDBG–DR grant on eligible activities within 6 years of HUD's obligation of funds pursuant to an executed grant agreement. The provisions governing the duration of funding for these CDBG–DR appropriations can be found in the following **Federal Register** notices: June 17, 2016 (81 FR 39708); November 21, 2016 (81 FR 83274); January 18, 2017 (82 FR 5594); August 7, 2017 (82 FR 36815); February 9, 2018 (83 FR 5868); August 14, 2018 (83 FR 40323); January 27, 2020 (85 FR 4688); January 6, 2021 (86 FR 568); and January 6, 2021 (86 FR 575).

For funds appropriated under these seven appropriations acts for CDBG–DR and CDBG–MIT grants, HUD waived the timely distribution of funds requirements in 24 CFR 570.494 and 570.902 and imposed an alternative requirement. HUD is now modifying the waiver and alternative requirement that replaces 570.494 and 570.902 governing the timely distribution of CDBG–DR funds, by adding the following sentence at the end of the paragraphs at section VI.A.28. of the June 17, 2016 notice (81 FR 39702); section VI.A.24. of the November 21, 2016 notice (81 FR 83268); section V.A.28. of the February 9, 2018 notice (83 FR 5860); and section V.A.26. of the August 30, 2019 notice (84 FR 45862):

HUD may extend the time period in this alternative requirement and associated grant period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD.

HUD is also adding the following two sentences to the end of the Duration of Funding paragraphs at sections VII of the June 17, 2016 notice (81 FR 39708) and the November 21, 2016 notice (81 FR 83274); section V of the January 18, 2017 notice (82 FR 5594); section I.E. of the August 7, 2017 notice (82 FR 36815); section VII of the February 9, 2018 notice (83 FR 5868); section V of the August 14, 2018 notice (83 FR 40323); section VII of the August 30, 2019 notice (84 FR 45870); and section V of the January 27, 2020 notice (85 FR 4688):

HUD may extend the period of performance administratively, in accordance with the provisions of the waiver and alternative requirement governing the timely distribution of funds. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

Adrianne Todman,

Deputy Secretary.

[FR Doc. 2023–14826 Filed 7–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–39]

30-Day Notice of Proposed Information Collection: Electronic Line of Credit Control System (eLOCCS) System Access Authorization Form Collection; OMB Control No.: 2535–0102

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* August 14, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; phone number 202–402–5535 or email: *PaperworkReductionActOffice@hud.gov.* This is not a toll-free number, HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 1, 2023 at 88 FR 26587.

A. Overview of Information Collection

Title of Information Collection: Electronic Line of Credit Control System (eLOCCS) System Access Authorization Form.

OMB Approval Number: 2535–0102.

Type of Request: Reinstatement with change.

Form Number: HUD–27054e.

Description of the need for the information and proposed use: Electronic Line of Credit Control System (eLOCCS) System Access Authorization Form.

Respondents: State or Local Government; Public Housing Authorities (PHAs), Individuals or Households.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–27054E	2,420.00	1.00	2,420.00	0.17	411.40	$25.27	$10,396.08
Total					411.40	25.27	10,396.08

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Office, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–14835 Filed 7–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2023–N048; FXFR131109WFHS0–234–FF09F12000; OMB Control Number 1018–0078]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0078'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On February 14, 2023, we published in the **Federal Register** (88 FR 9532) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 17, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests (ICR), the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–FAC–2023–0002) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received no comments in response to that notice.

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 Lacey Act (Act; 18 U.S.C. 42) prohibits the importation of any animal deemed to be and prescribed by regulation to be injurious to:

- Human beings;
- The interests of agriculture, horticulture, and forestry; or
- Wildlife or the wildlife resources of the United States.

Implementation and enforcement of the Lacey Act are the responsibility of the Department of the Interior. The implementing regulations at 50 CFR 16.13 allow for the importation of dead uneviscerated salmonids (family Salmonidae), live salmonids, live fertilized eggs, or gametes of salmonid fish into the United States. To effectively carry out our responsibilities and protect the aquatic resources of the United States, we must collect information regarding the source, destination, and health status of salmonid fish and their reproductive parts. Moreover, in order to evaluate import requests, we must be able to ascertain that the collected information is accurate. Individuals who provide the fish health data and sign the health certificates must demonstrate professional qualifications and be approved as Title 50 Certifiers by the Fish and Wildlife Service through an application process.

We use three forms to collect this Title 50 Certifier application information:

- FWS Form 3–2273 (Title 50 Certifying Official Form)—New applicants and those seeking recertification as a title 50 certifying official provide information so that we can assess their qualifications.
- FWS Form 3–2274 (Title 50 Certification Form)—Certifying officials use this form to affirm the health status of the fish or fish reproductive products to be imported.
- FWS Form 3–2275 (Title 50 Importation Request Form)—We use the information on this form to track and control importations and to ensure the safety of shipments.

Proposed Revisions

With this submission, we propose to modify Forms 3–2274 and 3–2275 to add fields to collect email addresses and contact phone numbers with each submission. We do not plan to revise Form 3–2273, which already collects this information. We also plan to begin publishing, with OMB approval, the results of this information collection for Form 3–2273 on a publicly accessible, Service-managed web page to inform importers of Certified Signing Officials by country of origin.

The public may request copies of any form or document contained in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs (50 CFR 16.13).

OMB Control Number: 1018–0078.

Form Numbers: 3–2273, 3–2274, and 3–2275.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Aquatic animal health professionals seeking to be certified title 50 inspectors; certified title 50 inspectors who perform health certifications on live salmonids; and any entity wishing to import live salmonids or salmonid reproductive products into the United States.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours
FWS Form 3–2273 (Title 50 Certifying Official Form)				
Private Sector	9	9	1 hour	9
Government	7	7	1 hour	7
FWS Form 3–2274 (U.S. Title 50 Health Certification Form)				
Private Sector	10	20	30 minutes	10
Government	15	30	30 minutes	15
FWS Form 3–2275 (Title 50 Importation Request Form)				
Private Sector	10	20	15 minutes	5
Government	15	30	15 minutes	8
Totals	66	116		54

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–14833 Filed 7–12–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2023–N049; FF09M21200–234–FXMB1231099BPP0; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Administration of U.S. Fish and Wildlife Service Investigational New Animal Drug (INAD) Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–New'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, 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.

On July 20, 2021, we published in the **Federal Register** (86 FR 38349) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on September 20, 2021. We did not receive any comments in response to that notice.

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 Aquatic Animal Drug Approval Partnership (AADAP) Program, operating under the authority of the Federal Food, Drug, and Cosmetic Act (FDCA; 21 U.S.C. 360b(j)), which permits the use of an investigational new animal drug to generate data to support a new animal drug approval (NADA), is part of the Fish and Aquatic Conservation fish health network. It is the only program in the United States singularly dedicated to obtaining U.S. Food and Drug Administration (FDA) approval of new medications needed for use in fish culture and fisheries management. Ultimately, the AADAP program allows fisheries professionals to more effectively and efficiently rear and manage a variety of fish species to meet production goals, stock healthy fish, and maintain a healthy environment. In order for participants (U.S. aquaculture facilities or researchers) to be able to use an unapproved drug under AADAP's National Investigational New Animal Drug (INAD) Program, they need to follow the FDA-approved study protocol(s) and submit the required data forms, including the INAD treatment data, to AADAP's INAD Program. Data collection is required by the FDA under the following regulations:

- 21 CFR part 511 (New Animal Drugs for Investigational Use) and
- 21 CFR part 514, subpart A (New Animal Drug Applications, General Provisions).

The Aquatic Animal Drug Approval Partnership (AADAP) Program is part of the Fish and Aquatic Conservation fish health network. It is the only program in the United States singularly dedicated to obtaining U.S. Food and Drug Administration (FDA) approval of new medications needed for use in fish culture and fisheries management. Ultimately, the AADAP program allows fisheries professionals to more effectively and efficiently rear and manage a variety of fish species to meet production goals, stock healthy fish, and maintain a healthy environment. In order for participants (U.S. aquaculture facilities or researchers) to be able to use an unapproved drug under AADAP's National Investigational New Animal Drug (INAD) Program, they need to follow the FDA-approved study protocol(s) and submit the required data forms, including the INAD treatment data, to AADAP's INAD Program.

There are 19 approved INADs approved for use within the Service's INAD Program (see *https://www.fws.gov/find-inad*), described as follows:

Medicated Feeds

Florfenicol (Aquaflor®) INAD #10–697—Aquaflor® is an aquaculture premix containing florfenicol and is only available through Merck Animal Health. The primary goal of field studies conducted under INAD #10–697 is to evaluate the efficacy of florfenicol-medicated feed for controlling mortality in a variety of fish species diagnosed with a variety of diseases that are caused by pathogens susceptible to florfenicol.

Slice® (Emamectin Benzoate) INAD #11–370—SLICE® is an aquaculture premix containing emamectin benzoate and is only available through Merck Animal Health. SLICE® premix can be purchased through Merck Animal Health and sent to an aquaculture feed mill for top coating. The primary goal of field studies conducted under INAD #11–370 is to evaluate the efficacy of SLICE®-medicated feed and safety of SLICE® to control mortality caused by external parasites in a variety of freshwater and marine fish species.

Oxytetracycline dihydrate (Terramycin® 200 for Fish) INAD #9332—Terramycin 200® for fish is an aquaculture premix containing oxytetracycline dihydrate (OTC) and is available through Syndel USA. Feed medicated with OTC can be purchased from aquaculture feed mills and used to treat bacterial diseases or to apply a skeletal mark on the fish. The primary goal of field studies conducted under INAD #9332 is to generate additional OTC-medicated feed efficacy data which can be used to expand the existing OTC label claims. Five treatment options are allowed, and disposition of investigational animals (including withdrawal times) varies with treatment regimen.

17α-methyltestosterone INAD #11–236—17α-methyltestosterone (MET) is an aquaculture premix and is only available through Rangen Inc. The primary goal of studies conducted under INAD #11–236 is to generate data evaluating the efficacy of MET administered in feed to larval tilapia to produce populations comprised of over 90 percent male fish.

17α-methyltestosterone INAD #8557—17α-methyltestosterone (MET) is an aquaculture premix and is only available through Rangen Inc. The primary goal of studies conducted under INAD #8557 is to generate data evaluating the efficacy of MET administered in feed to larval rainbow trout and Atlantic salmon to produce masculinized female fish that produce sperm.

17β-Estradiol INAD #12–671—17β-estradiol (E2) will be administered as a medicated feed and is only available to FDA-approved facilities. The primary goal of studies conducted under INAD #12–671 is to generate data evaluating the efficacy of E2 administered in feed to larval brook trout to produce feminized male fish that produce eggs.

Immersion

Chloramine-T INAD #9321—Chloramine-T (CLT) is a powder that is applied as an immersion bath treatment. CLT is only available for purchase through Syndel USA or B.L. Mitchell, Inc. The primary goal of field studies conducted under INAD #9321 is to evaluate the efficacy of CLT for controlling mortality in a variety of freshwater fish species for bacterial diseases not currently listed on the approved label. Approval of INAD #9321 is for non-labeled use only, and its use must comply with the approved label directions.

Hydrogen peroxide (35% Perox Aid®) INAD #11–669—35% Perox-Aid® (H2O2) is a liquid solution containing hydrogen peroxide that is applied as an immersion bath treatment. H2O2 is only available for purchase through Syndel USA. The primary goal of field studies conducted under INAD #11–669 is to evaluate the efficacy of H2O2 for controlling mortality caused by specific ectoparasites in freshwater or marine finfish species. It is also expected that the additional data will be used to expand the current H2O2 label claim. Approval of INAD #11–669 is for non-labeled use only, and its use must comply with the approved label directions.

Oxytetracycline hydrochloride INAD #9033—Oxytetracycline hydrochloride (OTIMM) is an aquaculture premix containing oxytetracycline hydrochloride, available through Pharmgate. OTIMM is available for purchase through many local farm and ranch stores or veterinarian supply outlets. The primary goal of field studies conducted under INAD #9033 is to evaluate the efficacy of OTIMM for controlling mortality in a variety of freshwater and marine finfish species for bacterial diseases. Immersion therapy is often the only option when treating young fish not yet accustomed to feeding on man-made fish diets.

Diquat® INAD #10–969—Reward® (DQT) is a liquid concentrate containing diquat dibromide, which is applied as an immersion bath treatment. DQT is available for purchase through many local farm and ranch stores or through Syngenta Crop Protection, LLC. The primary goal of field studies conducted under INAD #10–969 is to evaluate the efficacy of DQT for controlling mortality in all freshwater-reared finfish diagnosed with bacterial gill disease or external flavobacteriosis.

Sedatives

AQUI–S®20E INAD #11–741—Aqui-S®20E is a liquid containing 10 percent eugenol, that is applied as an immersion bath treatment. Aqui-S®20E is only available for purchase through AquaTactics Fish Health. The primary goal of field studies conducted under INAD #11–741 is to evaluate the efficacy of Aqui-S®20E for use as an anesthetic/sedative in all freshwater-reared finfish, freshwater prawn, all saltwater-reared finfish, and sharks.

BENZOAK VET® #11–740—BENZOAK VET® is a liquid containing 20 percent benzocaine, that is applied as an immersion bath treatment. BENZOAK VET® is only available for purchase through Riverence Brood LLC. The primary goal of field studies conducted under INAD #11–740 is to evaluate the efficacy of BENZOAK VET® for use as an anesthetic/sedative in all freshwater-reared finfish, freshwater prawn, and all saltwater-reared finfish.

Spawning Aids

Luteinizing Hormone-Releasing Hormone (LHRHa) INAD #8061—Luteinizing Hormone-Releasing Hormone analogue (LHRHa) is a solution that is applied as either an intraperitoneal (IP) or intramuscular (IM) injection. LHRHa is only available for purchase through Syndel USA. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #8061 is to generate data to help determine appropriate LHRHa treatment regimens for inducing gamete maturation in a variety of cultured and wildstock finfish species.

GnRH IIa Chicken Gonadotropin-Releasing Hormone II analog INAD #13–345—GnRH IIa is a synthetic peptide analogue of chicken gonadotropin-releasing hormone (cGnRH IIa). It is presented as a dry powder to be resuspended in saline solution for IP injection, and is only available for purchase through AquaTactics Fish Health. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #13–345 is to generate data to help determine appropriate GnRH IIa treatment regimens for use as a spawning aid for female ictalurids.

Ovaplant® Salmon Gonadotropin-Releasing Hormone analogue (sGnRHa) INAD #11–375—Ovaplant® is a synthetic peptide analogue of salmon gonadotropin-releasing hormone (sGnRHa). It is presented in a biodegradable cholesterol-based matrix as an IM pellet implant and is only available for purchase through Syndel USA. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #11–375 is to generate data to help determine appropriate Ovaplant® treatment regimens.

Ovaplant®-L Salmon Gonadotropin-Releasing Hormone analogue (sGnRHa) INAD #13–298—Ovaplant®-L is a synthetic peptide analogue of salmon gonadotropin-releasing hormone (sGnRHa). It is presented in a sustained release gel for injection and is only available for purchase through Syndel USA. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #13–298 is to generate data to help determine appropriate Ovaplant-L treatment regimens for inducing gamete maturation in a variety of cultured finfish species.

Common Carp Pituitary (CCP) INAD #8391—Common carp pituitary (CCP) is a powder (for suspension) that is applied as either an IP or IM injection. CCP is only available for purchase through Argent Aquaculture. The use of hormones to induce spawning in fish is critical to the success of many aquatic programs that need hormone treatment to complete final gamete maturation to ensure spawning. The primary goal of field studies conducted under INAD #8391 is to generate data to help determine appropriate CCP treatment regimens for inducing gamete maturation in a variety of cultured and wildstock finfish species.

Marking

Calcein (Se-Mark®) INAD #10–987—Calcein (Se-Mark®) is a liquid that contains 1 percent calcein for bath marking treatments on finfish and selected freshwater mussels. Calcein is only available for purchase through Syndel USA. Calcein is a fluorochrome compound that chemically binds with alkaline earth metals such as calcium, and upon binding, shows a marked increase in fluorescence when excited with blue light of about 500 nanometers (nm) in wavelength. The primary goal of field studies conducted under INAD #10–987 is to establish the effectiveness of calcein to mark fin rays, scales, otoliths, and other calcified fish, oysters, or selected mussel tissues via immersion baths. This is a nonlethal marking evaluation method.

Injectable

Erythromycin 200 Injectable INAD #12–781—Erymicin 200 Injection (Erymicin 200) is a solution that contains erythromycin for injection on juvenile and adult Salmonids. Erymicin 200 is only available for purchase through Syndel USA. The primary goal of field studies conducted under INAD #12–781 is to evaluate the efficacy of erythromycin for (1) controlling mortality caused by bacterial kidney disease (BKD) (causative agent: *Renibacterium salmoninarum*) in salmonid species; and (2) control the vertical transmission of *R. salmoninarum* from BKD-positive female broodstock to eggs/progeny.

Approved INAD study protocols require submission of the following forms associated with the data collection:

- *Form-W:* Worksheet (all INADs);
- *Form-1:* Report on Receipt of Drug (all INADs);
- *Form-2A or 2B:* Chemical Use Log (all INADs);
- *Form-3:* Diagnosis, Treatment, and Mortality/Spawning/Anesthetic Record (all INADs);
- *Form-4:* Necropsy Report Form (specific INADs);
- *Form-4a:* Report on Efficacy Determination Sample (specific INADs); and
- *Form-5:* Transfer of Treated Fingerling (specific INADs).

The INAD forms listed above collect the following information from program participants (specific information may vary depending on INAD protocol used):

- Study identification number and title;
- Sponsor name and contact information;
- Facility name;

- Study director and contact information;
- Principal clinical field trial coordinator name;
- Study monitor's name and addresses;
- Investigator's name and addresses;
- Proposed study start and completion dates;
- Background, purpose, and objectives of study;
- Study materials;
- Experimental units;
- Entrance criteria;
- Identification of treatment groups;
- Treatment schedules;
- Treatment response parameters;
- Recordkeeping procedures;
- Disposition of investigational animals;
- Disposition of investigational drug;
- Data handling, quality control, monitoring, and administrative responsibilities;
- Plans for data analysis;
- Protocol and protocol amendments; and
- Protocol deviations.

The Service's AADAP Program will use the information that is collected on the study forms to ensure the studies are following the guidelines set by the FDA. The study data will be downloaded to a spreadsheet where it will be analyzed for compliance. Summary reports will be created from the data collected from the forms and will be submitted to the FDA, as required. Submission of the data forms is required by the FDA for the facility to participate in the INAD Program.

A cooperative agreement is also needed between the participating companies/agencies and the Service's AADAP Program. This agreement establishes obligations to be met and procedures to be followed by the Service and participant to establish and maintain cooperative INADs to enable the use of certain drugs and chemicals under the INAD process as set forth by the FDA. The goal of this agreement is to consolidate the INAD process; eliminate duplication of effort; reduce workloads and costs; and ensure needed drugs are made available to aquaculture and fisheries management facilities in the U.S. in compliance with FDA regulations.

Additional information for the INAD Program and how to participate can be found at the following link: *https://www.fws.gov/service/investigational-new-animal-drugs*. This web page describes frequently asked questions regarding how to participate in the INAD Program and what is expected of the participants. The site also includes the investigator and monitor guides created to explain the INAD Program process to study participants. We are currently developing additional study templates for the INADs, for use as a guide for filling out the forms. These templates will provide study participants with helpful information to correctly complete each form. We also created a user manual for the online INAD database.

The public may request copies of any form or document contained in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Administration of U.S. Fish and Wildlife Service Investigational New Animal Drug (INAD) Program.

OMB Control Number: 1018–New.

Form Number(s): Form-W, Form-1, Form-2, Form-2A or 2B, Form-3, Form-4, Form-4a, and Form-5.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Private aquaculture facilities; universities; and State, local, and Tribal governments that have a need to use INADs.

Total Estimated Number of Annual Respondents: 273.

Total Estimated Number of Annual Responses: 302.

Estimated Completion Time per Response: Varies from 2 hours to 5 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,215.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time for the initial registration and submission of cooperative agreement, and on occasion for submission of study data.

Total Estimated Annual Nonhour Burden Cost: $289,232 ($197,400 for enrollment fees (282 INADS × $700 per INAD per facility each year), along with $91,832 associated with the costs of purchasing the INAD from the appropriate drug supplier).

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–14834 Filed 7–12–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DOI–2023–0009; 2341A2100DD/AAKC0010130/A0A501010.999900]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to create the Bureau of Indian Affairs (BIA) Privacy Act system of records, INTERIOR/BIA–35, Behavioral Health and Wellness Program. This system helps the Behavioral Health and Wellness Program (BHWP) provide immediate behavioral health crisis support, clinical counseling services, crisis care coordination, and communication with the client and appropriate points of contact for referrals and continued service delivery or emergency care. This newly established system will be included in DOI's inventory of systems of records.

DATES: This new system will be effective upon publication on July 13, 2023. New routine uses will be effective August 14, 2023. Submit comments on or before August 14, 2023.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0009] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov*. Include docket number [DOI–2023–0009] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0009]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Richard Gibbs, Associate Privacy Officer, Assistant Secretary—Indian Affairs, 1011 Indian School Road NW,

Room 164, Albuquerque, New Mexico 87104, *Privacy_Officer@bia.gov* or (505) 563–5023.

SUPPLEMENTARY INFORMATION:

I. Background

The DOI is establishing a new system of records for the INTERIOR/BIA–35, Behavioral Health and Wellness Program. The Assistant Secretary—Indian Affairs consists of two bureaus, which are the BIA and Bureau of Indian Education (BIE). The BIA supports the functions of the BIE and is publishing this notice to describe the purpose of the BHWP that provides immediate behavioral health crisis support, clinical counseling services, crisis care coordination, and facilitates communication between clients and appropriate points of contact for referrals and continued service delivery or emergency care.

The BIE is responsible for providing quality educational opportunities from early childhood through adulthood in accordance with Federal trust responsibilities for approximately 43,000 students. The BIE funds 183 elementary, secondary, and residential schools across 64 Indian reservations and 23 states. Of these, 53 are BIE-operated and 130 are tribally-controlled. Additionally, BIE directly operates two post-secondary institutions and funds and/or operates off-reservation boarding schools and peripheral dormitories near reservations for students attending public schools. The BIE also serves many American Indian and Alaska Native post-secondary students through higher education scholarships and support funding for tribal colleges and universities.

The BIE identified the need for comprehensive behavioral health and wellness services at a multitude of Bureau-funded schools, dormitories, colleges, and universities. The BIE is committed to creating positive, safe, and culturally relevant learning environments where students can gain knowledge, skills, and behaviors necessary for physical, mental, and emotional wellbeing. The BIE established the BHWP to address the significant mental health needs of students and staff at all BIE-funded institutions including BIE-operated schools, tribally-controlled schools, post-secondary institutions, and tribal colleges and universities.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains, and the routine uses of each system. The INTERIOR/BIA–35, Behavioral Health and Wellness Program, system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/BIA–35, Behavioral Health and Wellness Program.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by the Office of the Director, Bureau of Indian Education, 1849 C Street NW, MIB–3621, Washington, DC 20240, and at BIE contractor facilities. A current listing of contractor facilities may be obtained by writing to the System Manager identified below.

SYSTEM MANAGER(S):

Student Health Program Specialist, Office of the Director, Bureau of Indian Education, 1849 C Street NW, MIB–3621, Washington, DC 20240.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Every Student Succeeds Act, Public Law 114–95; Indian Education Policies, 25 CFR part 32; Expenditure of appropriations by Bureau, 25 U.S.C. 2006; Congressional statement of findings, 25 U.S.C. 5301; Indian Child Welfare Act of 1978, Public Law 95–60825 U.S.C. 1901; Confidentiality of Substance Use Disorder Patient Records, 42 CFR part 2; Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior, 43 CFR Subpart E; Rehabilitation Act of 1973, as amended, Public Law 93–112, Section 504, 29 U.S.C. 794; Tribally Controlled Schools Act of 1988, 25 U.S.C. 2501 *et seq.;* Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5301 *et seq.;* Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191; Individuals with Disabilities Act (IDEA), 20 U.S.C. 1400 *et seq.;* and Maintenance and Control of Student Records in Bureau Schools, 25 CFR part 43.

PURPOSE(S) OF THE SYSTEM:

The primary purposes of the system are to provide immediate behavioral health crisis support, clinical counseling services and crisis care coordination, and to facilitate communication between the client and appropriate points of contact for referrals and continued service delivery or emergency care.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include current and former BIE employees, contractors, students, parents, guardians or caretakers of students, and staff at BIE-operated K–12 schools, BIE-operated post-secondary institutions, tribally-controlled schools operated pursuant to a grant under the Tribally Controlled Schools Act of 1988 or a contract under the Indian Self-Determination and Education Assistance Act, and tribal colleges and universities. These individuals are collectively referred to as clients for purposes of this program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system include information collected on forms from BHWP clients as follows:

(1) Student Information. Name, date of birth, mailing address, physical address, home and cell phone number, email address, parent, guardian, or caretaker information, emergency

contact information, school of enrollment, grade level, tribe of enrollment and disability information such as a client's Individualized Education Plan (IEP) or 504 Plan. Information about clinical services provided by the service provider may be maintained in the student's records and may be viewed by the Student Health Program Specialist, as authorized and necessary to facilitate behavioral health, counseling or crisis care coordination or referrals for this program.

(2) Parent, Guardian, or Caretaker Information. Name, relationship to student, mailing address, email address, physical address, home and/or cell phone number, and tribe of enrollment.

(3) BIE Staff/Employee Information. Name, date of birth, mailing address, physical address, home and/or cell phone number, email address, school affiliation, tribe of enrollment, and emergency contact information.

(4) School Level Staff and Employee Information. Name, date of birth, mailing address, physical address, home and/or cell phone number, email address, school affiliation, tribe of enrollment, and emergency contact information.

(5) Tribal Staff and Employee Information. Name, date of birth, mailing address, physical address, home and/phone number, email address, school affiliation, tribe of enrollment, and emergency contact information.

(6) Emergency Contact Person. Contact name, relationship to client, and emergency contact phone, cell phone number, and email address.

(7) In the case of a critical incident, sentinel event, death, or crisis incident, the PII may also include client name, age, date of birth, address, parent, guardian, or caretaker information if applicable, emergency contact information, manner of death or incident type, location of death or incident, date and time of death or incident, any known witness or collateral contact, and their contact information at time of client death or client related incident. This information may be shared with appropriate local, tribal, city, county, state, or Federal law enforcement officials and first responders for immediate emergency response engagement, medical centers for emergency medical care, and social services or other agencies in the event of abuse or neglect. This information may be shared with appropriate BIE and BHWP officials and administrators as needed, as well as tribal officials for appropriate critical incident or sentinel event reporting.

RECORD SOURCE CATEGORIES:

Information comes primarily from BHWP Care Coordinators and BHWP licensed providers from the school point of contact at time of client referral, directly from the client, and the client's parent, guardian, emergency contact or caretaker when necessary.

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 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, Tribal, or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant, or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial, and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (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 DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI 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.

L. To the Office of Management and Budget (OMB) during the coordination

and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To a parent or guardian, medical facility, service provider, BIE-funded school official, or appropriate parties to provide immediate behavioral health crisis support, clinical counseling services and crisis care coordination, and to facilitate communication between the client and appropriate points of contact for referrals and continued service delivery or emergency care pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.;* Maintenance and Control of Student Records in Bureau Schools, 25 CFR part 43; Confidentiality of Substance Use Disorder Patient Records, 42 CFR part 2; and other applicable laws and regulations.

P. To Federal, tribal, state, local, or private agencies for referral to continue providing services, to report, investigate, and treat any incidents of suspected abuse or neglect pursuant to the Indian Child Protection and Family Violence Prevention Act, Public Law 101–630, or in the event of any critical incident as required by 25 CFR part 43, other applicable laws, and BHWP policy and procedures.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are contained in file folders stored within filing cabinets in secured rooms. Electronic records are stored on electronic media at a Federal Risk and Authorization Management Program (FedRAMP) approved cloud service provider.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information from the BHWP is retrievable by client name, age, gender, school affiliation, address, call type, and client identified record number by authorized users of the system. Additionally, de-identified aggregate data, such as diagnosis codes, numbers of encounters, and types of encounters, and general demographics may be retrieved.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records retention schedules for the BHWP are being developed and will be submitted to NARA for scheduling and approval. These records will be treated as permanent until the records are scheduled and have been approved by NARA. Upon termination of the BHWP service contract with the Contracting Agency, the contractor will transfer all electronic health record information to the BIE for appropriate record keeping and storage in alignment with all Federal requirements.

BHWP system usage records are covered by the Departmental Records Schedule 1.4A, Short Term Information Technology Records, System Maintenance and Use Records (DAA–0048–2013–0001–0013), which was approved by NARA. These records include system operations reports, login and password files, audit trail records and backup files. The disposition is temporary. Records are cut-off when superseded or obsolete and destroyed no later than three years after cut-off. Records associated with a 42 CFR part 2 program that is discontinued or is taken over or acquired by another program will be processed in accordance with 42 CFR 2.16, Security for records, and 2.19, Disposition of records by discontinued programs.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior.

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. Paper records are maintained in locked file cabinets and/or safes under the control of authorized personnel during normal hours of operation. Computer servers on which electronic records are stored are located at a FedRAMP-approved cloud service provider with physical, technical, and administrative levels of security to prevent unauthorized access to the system and information assets. The cloud service provider implements protections, controls and access restrictions as required to maintain the necessary FedRAMP certification and to mitigate the privacy risks. Authorized DOI and contractor personnel must complete mandatory security, privacy, records management, and HIPAA training specific to their roles to ensure they are knowledgeable about how to protect personally identifiable information before they are granted access to the system of records.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* the Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, multi-factor authentication, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls which establish access levels according to the type of user. Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. Audit trails are maintained and reviewed periodically to identify unauthorized access or use. A Privacy Impact Assessment was conducted on the Behavioral Health and Wellness Program System to ensure that Privacy Act requirements are met, and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the system.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the applicable System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted

by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written request to the applicable System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests*. The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the applicable System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests*. The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Signed:

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2023–14877 Filed 7–12–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DOI–2023–0005; 234D0104IG, DG10100000, DIG000000.000000]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to modify the Office of Inspector General (OIG) Privacy Act system of records, INTERIOR/OIG–02, Investigative Records. DOI is publishing this revised notice to update the system location, record source categories, storage and records retention, expand and clarify categories of individuals and records, propose a new routine use and modify existing routines uses, and provide general administrative updates to remaining sections to accurately reflect management of the system of records in accordance with the Office of Management and Budget (OMB) policy. Additionally, DOI is publishing a notice of proposed rulemaking (NPRM) elsewhere in the **Federal Register** to claim exemptions in this system of records from certain provisions of the Privacy Act. This modified system will be included in DOI's inventory of record systems.

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective August 14, 2023. Submit comments on or before August 14, 2023.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0005] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0005] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0005]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Eric Trader, Associate Privacy Officer, Office of Inspector General, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4428–MIB, Washington, DC 20240, *oig_privacy@doioig.gov* or (202) 208–1644.

SUPPLEMENTARY INFORMATION:

I. Background

The OIG maintains the INTERIOR/OIG–02, Investigative Records, system of records. The purpose of this system is to maintain certain investigative case files and other materials created or gathered during the course of an official investigation. DOI last published the INTERIOR/OIG–02, Investigative Files, system of records notice in the **Federal Register** at 76 FR 60519 (September 29, 2011); modification published at 86 FR 50156 (September 7, 2021). DOI is publishing this revised notice to update the system location; record source categories; policies and practices for storage and records retention; expand the categories of individuals; update categories of records to clarify that the system may contain additional personally identifiable information obtained from any source relevant to an OIG investigation; update the record access, contesting record, and notification procedures; and provide general and administrative updates to the remaining sections of the notice in accordance with the OMB Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.* Additionally, OIG is changing the routine uses from a numeric to an alphabetic list, and is proposing to modify existing routine uses and add a new routine use to provide clarity and transparency, and to reflect updates consistent with standard DOI routine uses.

Routine uses A, B, F, H, J, N, and P have been modified to provide additional clarification on external organizations and circumstances where disclosures are proper and necessary to facilitate investigations or comply with Federal requirements. Routine use A was slightly modified to further clarify disclosures to the Department of Justice (DOJ) or other Federal agencies, or other

individuals or entities when necessary, in relation to litigation or judicial hearings. Routine use B was modified to clarify disclosures to a congressional office to respond to or resolve an individual's request made to that office. Routine use F was modified to clarify sharing of information with government agencies, individuals, or entities when relevant for hiring and retention, or issuance of security clearance, license, contract, grant or benefit. Routine use H was modified to clarify sharing of information with government agencies and organizations in response to court orders or for discovery purposes related to litigation. Modified routine use J allows OIG to share information with appropriate Federal agencies or entities when reasonably necessary to respond to a breach of personally identifiable information and to prevent, minimize, or remedy the risk of harm to individuals or the Federal Government in accordance with OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information.* Routine use N was modified to include review by designated OIG officials and clarify circumstances where there is a legitimate public interest in the disclosure of information that would not constitute an unwarranted invasion of privacy. Routine use P was modified to share information with the DOJ regarding their obligations under an international treaty, convention, or executive agreement.

Proposed routine use C facilitates sharing of information with the Executive Office of the President to resolve issues concerning an individual's records. DOI is also removing three routine uses that are no longer needed. The notice of disclosure to consumer reporting agencies in former routine use 13 was moved to the end of this section. Former routine uses 21 and 28 were removed as they are no longer needed since OIG no longer shares information with the Federal Labor Relations Authority and the Recovery Accountability and Transparency Board.

Pursuant to the Privacy Act, 5 U.S.C. 552a(b)(12), DOI may disclose information from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) to aid in the collection of outstanding debts owed to the Federal Government.

In a Notice of Proposed Rulemaking published separately in the **Federal Register**, DOI is proposing to claim additional exemptions for records maintained in this system pursuant to the Privacy Act, 5 U.S.C. 552a(k)(1), (k)(3), and (k)(5).

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The INTERIOR/OIG–02, Investigative Records, system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/OIG–02, Investigative Records.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Records covered by this system are maintained at the following locations:

(1) U.S. Department of the Interior, Office of Inspector General, 1849 C Street NW, Washington DC 20240;

(2) Office of Inspector General, 381 Elden Street, Suite 3000, Herndon, VA 20170;

(3) Office of Inspector General Regional Offices and Regional sub-offices. A current listing of these offices may be obtained by writing to the System Manager; and

(4) Investigative site during the course of an investigation.

SYSTEM MANAGER(S):

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4428–MIB, Washington, DC 20240.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. 401–424.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to help facilitate the OIG's various responsibilities under the Inspector General Act of 1978, as amended. The OIG is statutorily directed to conduct and supervise investigations relating to programs and operations of the DOI, to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste, and abuse in such programs and operations. Accordingly, records in this system are used within the DOI and OIG during the course of investigating individuals and entities suspected of misconduct, fraud, waste, and abuse, other illegal or unethical acts, and in conducting related criminal prosecutions, civil proceedings, and administrative actions. These records are also used to fulfill reporting requirements, to maintain records related to the OIG's activities, and to prepare and issue reports to Congress, the DOI and its components, the DOJ, the public, and other entities as appropriate within the mission of the OIG.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system include current and former DOI employees, potential employees, contractors, and subcontractors; complainants, witnesses, confidential and non-confidential informants, union officials; recipients of federal assistance or funds and their contractor or subcontractors and employees; alleged violators of DOI rules and regulations; individuals investigated and interviewed; persons suspected of violations of

administrative, civil and criminal provisions; and grantees, sub-grantees, lessees, licensees, and other persons engaged in business with the DOI or having contact with the DOI or geographical areas under its jurisdiction.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to investigations conducted by the OIG, include:

(1) Complaints, requests to investigate, and administrative referrals;

(2) Records of case initiation including the following data fields: case number, title of case, dates, offices/personnel assigned, summary;

(3) Documents, statements, and information of any kind gathered through investigation;

(4) Reports, correspondence, notes and memoranda generated by OIG regarding investigations; and

(5) Records on complainants, subjects, victims, witnesses that may contain the following: name, status as government employee, Social Security number, birth date, birth place, aliases, gender, citizenship, race/ethnicity, driver's license or other identification number(s), education, financial or credit card information, spouse and family information, group affiliation(s), government and nongovernment employment information, home and mailing address(s), personal and official phone number(s), personal and official email address(s), photo, and any other personal information obtained from any source relevant to the DOI OIG investigations.

RECORD SOURCE CATEGORIES:

As an investigative agency focusing on the activities of the DOI, the OIG collects records in this system from any relevant investigative source, including the DOI; other federal, state, and local governments, businesses, and other entities; and private parties or individual members of the public who communicate, interact with, or request assistance or services from the OIG, or who have information that is relevant to OIG investigations.

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 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside OIG as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, or to other individuals or entities who are parties to such litigation or proceedings, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information, when relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI OIG suspects or has confirmed that there has been a breach of the system of records;

(2) DOI OIG has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (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 DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI OIG 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.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of designated OIG officials, where there is a legitimate public interest in the disclosure of the information, which may include but is not limited to, a matter under investigation or audit becomes public knowledge; or the disclosure is deemed appropriate to preserve confidence in the integrity of the OIG audit or investigative process; or to demonstrate the accountability of DOI officers,

employees, or individuals covered by this system; except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To an individual or entity, to the extent necessary in order to seek information relevant to a decision by DOI concerning the hiring, assignment or retention of an individual or other personnel action, the issuance, renewal, or retention or revocation of a security clearance, the execution of a security or suitability investigation, the letting of a contract, or the issuance, retention or revocation of a license, grant, or other benefit.

P. To an individual or entity, to the extent necessary in order to seek information or assistance relevant to an OIG investigation, audit, or evaluation.

Q. To a foreign government or to DOJ regarding obligations under an international treaty, convention, or executive agreement entered into by the United States.

R. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in an investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, special studies of the civil service and other merit systems, review of Human Resources or component rules and regulations, investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of an OIG or DOI investigation, and such other functions promulgated in 5 U.S.C. 1205–06.

S. To a grand jury agent pursuant to a federal or state grand jury subpoena or in response to a prosecution request that such record or information is released for the purpose of its introduction to a grand jury.

T. To the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deductions, or other information necessary as a result of an investigation for OPM to carry out its personnel management functions and studies.

U. To Treasury and to the DOJ, when the information is subject to an ex parte court order permitting the disclosure of return or return information (26 U.S.C. 6103(b)) by the Internal Revenue Service, or when disclosure is necessary to facilitate obtaining such an order.

V. To the Office of Government Ethics for any purpose consistent with that office's mission including the compilation of statistical data.

W. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

X. To an individual who has been interviewed or contacted by OIG pursuant to an audit, investigation or evaluation, OIG may provide copies of that individual's statements, testimony, or records produced.

Y. To appropriate agencies, entities, and persons when OIG determines that disclosure may prevent or minimize a risk of harm to DOI programs, personnel or property, including but not limited to a risk of loss or misuse of funds granted or paid by the DOI to any other agency, entity or person.

Z. To the Council of the Inspectors General on Integrity and Efficiency, any successor entity, and other Federal agencies and their Offices of Inspectors General, as necessary to respond to an authorized audit, investigation or review.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and all other media including but not limited to photographs, audio recordings, diskettes, and CDs are stored in file cabinets in a secured area. Electronic records are maintained on file and email servers that are protected with user account access controls and other appropriate electronic security measures, such as multi-factor authentication and data encryption at rest and during transit, and are physically located in locked facilities that are secured at all times by alarm systems and video surveillance cameras.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by individual's name, case number, or document title.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with Office of the Secretary Records Disposal Schedule, 2802—Investigative Records, which was approved by NARA (N1–048–10–03) Records relating to investigative reports and material pertaining allegations of violation of regulations, Departmental policy, and law are covered under 2802.2 with a temporary disposition and destroyed ten years after the completion of the investigation or action and transferred to NARA. Records selected to have historical value are covered under 2802.1 and are held permanently and transferred to NARA after twenty-five years. Records are disposed of in accordance with NARA guidelines and Departmental policy.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to paper records is restricted to authorized personnel on a need-to-know basis. During duty hours, paper records are located in file cabinets in OIG space occupied by authorized personnel. During non-duty hours, paper records and other physical media are maintained in locked cabinets located in appropriately secured OIG space.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, network system security monitoring, and software controls.

Access to electronic records is restricted to authorized personnel who use them for official purposes. Each person granted access to the system must be individually authorized to use the system. Security of the system and records therein is maintained through the use of passwords and other electronic security measures. Passwords are changed on a cyclical basis. These computer servers are located in locked facilities that are secured at all times by alarm systems and video surveillance cameras. During non-duty hours the alarm system provides immediate notification of any attempted intrusion to OIG Information Technology personnel. All data exchanged between the servers and individual personal computers is encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location. Measures have been taken to ensure that the handling of this information meets the requirements of the DOI Privacy Act regulations, 43 CFR 2.226.

A Privacy Impact Assessment was conducted and recently updated regarding the electronic records within the system to ensure that Privacy Act requirements are met, and appropriate

privacy controls were implemented to safeguard the personally identifiable information contained in the system. The assessment verified that appropriate controls and safeguards are in place. Safeguards include, but are not limited to, a requirement restricting access to the system to authorized OIG personnel as granted by the System Manager. All personnel within OIG, including all personnel with access to records in this system, are required to complete all privacy, records management, and security training on an annual basis and sign the DOI Rules of Behavior.

RECORD ACCESS PROCEDURES:

DOI has exempted portions of this system from the access provisions of the Privacy Act pursuant to sections 5 U.S.C. 552a(j) and (k). OIG will make access determinations on a case-by-case basis.

To the extent that portions of this system are not exempt, an individual requesting access to their records should send a written inquiry to the System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

DOI has exempted portions of this system from the amendment provisions of the Privacy Act pursuant to sections (j) and (k). OIG will make amendment determinations on a case-by-case basis.

To the extent that portions of this system are not exempt, an individual requesting amendment of their records should send a written request to the applicable System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

DOI has exempted portions of this system from the notification procedures of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). OIG will make notification determinations on a case-by-case basis.

To the extent that portions of this system are not exempt, an individual requesting notification of the existence of records about them should send a written inquiry to the applicable System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system contains law enforcement investigatory records that are exempt from certain provisions of the Privacy Act, 5 U.S.C. 552a(j) and (k). In accordance with 5 U.S.C. 553(b), (c) and (e), DOI has promulgated rules separately in the **Federal Register** to claim exemptions for this system pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), and (k)(5).

Pursuant to 5 U.S.C. 552a(j)(2), DOI has exempted this system from the provisions of the Privacy Act except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). DOI has also exempted portions of this system from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5). Additionally, when this system receives a record from another system that is exempted in that source system under 5 U.S.C. 552a(j) or (k), DOI claims the same exemptions for those records that are claimed in the primary systems of records from which they originated and any additional exemptions set forth here.

HISTORY:

76 FR 60519 (September 29, 2011); modification published at 86 FR 50156 (September 7, 2021).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2023–14882 Filed 7–12–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–NPS0035687; PPWONRADE3, PPMRSNR1Y.NM0000 (223); OMB Control Number 1024–NEW]

Agency Information Collection Activities; Socioeconomic Monitoring Study of National Park Service Visitors

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Phadrea Ponds, NPS Information Collection Clearance Officer, 12201 Sunrise Valley Drive (MS–242) Reston, VA 20192; or *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number 1024–NEW (SEM) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Bret Meldrum by email

at *bret_meldrum@nps.gov* (email) or at 970–267–7295 (telephone). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501*et seq.)* and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 27, 2021 (86 FR 48244). A comment requesting a copy of the survey instruments was received. Copies of the surveys were sent to the commenter. No additional 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. 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 National Park Service (NPS) Social Science Program (SSP) is authorized by 54 U.S.C. 100701 to collect information that will improve the ability of the NPS to provide state-of the-art management, protection, and interpretation of, and research on, the resources of the System. However, the data currently available from survey research is insufficient for generalizing findings across all national park units in the System with regards to visitor experiences, attitudes, and spending behaviors. Past and present socioeconomic research in NPS units do not allow for comparison across units or against a regional and nationwide benchmark of information. Without this data, local, regional, and national-level NPS managers lack a comprehensive understanding of visitor demographics, economic contribution, and visitation related experiences in park units needed to monitor how well the System is serving the public. In 2016, the NPS SSP conducted a pilot study in 14 NPS units to identify and better understand the need for more advanced socioeconomic monitoring. The pilot study produced and verified a study design that will allow SSP to fully implement a Socioeconomic Monitoring Study (SEM). Building on the findings from the pilot study, the SEM will collect information from visitors at 30 National Park units annually to provide generalizable results for NPS managers and planners across the System to understand and monitor: visitor demographics, economic contribution, services, facilities, and infrastructure investments. Park units will be able to compare their unit data with regional and national-level data to make informed decisions in future planning and management efforts.

Title of Collection: Socioeconomic Monitoring Study of National Park Service Visitors.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: General Public; any person visiting a national park during the sampling period.

Total Estimated Number of Annual Respondents: 58,544. (36,936 intercept survey respondents, 8,310 non-response survey respondents, and 13,298 mail-back survey respondents).

Estimated Completion Time per Response: Intercept survey: 5 minutes; Non-response survey: 2 minutes; and Mail-back survey: 20 minutes.

Total Estimated Number of Annual Burden Hours: 7,788 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collections Clearance Officer, National Park Service.

[FR Doc. 2023–14889 Filed 7–12–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0151; Docket ID: BOEM–2023–0004]

Agency Information Collection Activities; Plans and Information

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes this information collection request (ICR) to renew with revisions Office of Management and Budget (OMB) Control Number 1010–0151.

DATES: Interested persons are invited to submit comments no later than August 11, 2023.

ADDRESSES: Submit your written comments on this ICR to the OMB's desk officer for the Department of the Interior (DOI) at *www.reginfo.gov/public/do/PRAMain.* From the *www.reginfo.gov/public/do/PRAMain* landing page, find this information collection by selecting ''Currently under

Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by parcel delivery to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0151 in the subject line of your comments. You may also comment by searching the docket number BOEM–2023–0004 at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov* or by telephone at 703–787–1025. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

Title of Collection: ''30 CFR part 550, subpart B, Plans and Information.''

Abstract: This ICR concerns the paperwork requirements in the regulations under 30 CFR part 550, subpart B, ''Plans and Information.''

The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.*), authorizes the Secretary of the Interior to prescribe regulations to administer leasing of mineral resources on the OCS. The Secretary delegated that regulatory authority to BOEM. BOEM's regulations apply to all operations conducted under a lease. The OCS Lands Act and BOEM's implementing regulations require lessees to submit exploration plans (EPs), development and production plans (DPPs), and development operations coordination documents (DOCDs) to the Secretary for approval prior to commencing certain activities. See 43 U.S.C. 1340 and 1351. On the Arctic OCS, lessees and operators are required to develop an integrated operations plan (IOP) for each exploratory program and to submit additional planning information with their EPs.

The BOEM regulations at 30 CFR part 550, subpart B, require lessees to submit plans and information before conducting OCS activities under a lease. Those information collections are the subject of this ICR.

BOEM geologists, geophysicists, and environmental scientists and other Federal agencies (*e.g.,* the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS)) analyze and evaluate the information collected under subpart B. Their analyses ensure that planned operations are safe, conserve OCS resources, and avoid undue effects on the marine, coastal, or human environment. BOEM uses the information to make an informed decision on whether to approve the proposed EP, DPP, or DOCD as submitted, or require modifications. BOEM also uses the information submitted by the lessees and operators (*e.g.,* BOEM–0137, OCS Plan Information Form) to determine which mitigation measures are necessary to minimize adverse impacts. Also, the affected States may review the information collected to ensure consistency with their coastal zone management plans.

BOEM also provides reports (typically annually) to NMFS and USFWS to document compliance with the Endangered Species Act (ESA) and any relevant biological opinions. These reports may include information on the effectiveness of implemented terms and conditions and reasonable and prudent measures, adverse impacts of activities, and any incidental takes, in accordance with 50 CFR 402.14(i)(3).

NMFS' recent biological opinion titled ''Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico,'' (Consultation Number FPR–2017–9234) dated March 13, 2020, and amended in 2021 (GOM BiOp), covers all activities associated with the OCS oil and gas program in the Gulf of Mexico through approximately March 2029. The GOM BiOp addresses the impacts to and incidental take of ESA-listed species as a result of BOEM-authorized activities. Compliance with the GOM BiOp's relevant terms, conditions, mitigation measures, and protocols necessitates updates to the information that lessees and operators must submit in the appendices to their plans. Certain post-lease approvals (*e.g.,* for activities involving new and unusual technologies, equipment involving entanglement risks, and certain geological and geophysical surveys) require step-down review with NMFS and may require additional information to fully assess the potential for impacts to protected species. A step-down review allows for a more expedient and detailed assessment of effects on species within the context of geographic area. The GOM BiOp modified reporting requirements from the prior BiOp issued by NMFS; therefore, BOEM is revising the estimated burdens identified in this ICR.

OMB Control Number: 1010–0151.

Form Number:

- BOEM–0137—OCS Plan Information Form
- BOEM–0138—EP Air Quality
- BOEM–0139—DOCD/DPP—Air Quality
- BOEM–0141—ROV Survey Report
- BOEM–0142—Environmental Impact Analysis Worksheet

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur lessees and operators.

Total Estimated Number of Annual Responses: 1,291 responses.

Total Estimated Number of Annual Burden Hours: 286,144 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion, semi-monthly, and varies by section.

Total Estimated Annual Non-Hour Burden Cost: $3,688,524.

BOEM identified three non-hour costs associated with this information collection. Those costs are fees that BOEM charges lessees to review their planning documents, such as EPs ($4,348 fee for 95 EPs; total $413,060 annually), DPPs or DOCDs ($5,017 fee for 180 DPPs and DOCDs; total $903,060 annually), and conservation information documents (CIDs) ($32,372 fee for 17 CIDs; total $550,324 annually).

Also, lessees incur a non-hour cost associated with the Protected Species Observer Program. This cost totals $1,822,080 and covers observation activities that are usually subcontracted to companies with expertise in these areas.

Estimated Reporting and Recordkeeping Hour Burden: The current OMB Control Number 1010–0151 accounts for 436,438 annual burden hours, 4,266 responses, and $3,939,435 non-hour cost burdens. Based on several revisions, BOEM estimates the burden for the renewal will be 286,144 annual burden hours with 1,291 responses, and $3,688,524 non-hour cost burdens.

In calculating the information collection burdens, BOEM accounted for decreases in the number of plans submitted annually and for the changes resulting from the GOM BiOp. BOEM currently requires monthly marine mammal observation and monitoring reports and a final report within 90 days of the completion of a lessee's OCS survey, consistent with GOM BiOp Appendix A, ''Seismic Survey Mitigation and Protected Species Observer Protocols.'' The GOM BiOp requirements supersede BOEM's Notice to Lessees and Operators 2016–G02, which had required two reports each month. Therefore, BOEM estimates an overall decrease in the burden related to these monitoring reports.

The GOM BiOp requires additional reporting if one or more individuals from a protected species are observed within an enclosed moon pool, which is an opening in the bottom of a marine platform, drill ship, or vessel through which drilling is done. The operator must report the observation within 24 hours and daily thereafter as long as any individual from a protected species remains within the moon pool. With this new requirement, BOEM estimates a slight increase in annual reporting.

While the GOM BiOp increased certain reporting burdens for lessees and operators in the Gulf of Mexico, the overall burdens are estimated to decrease slightly due to the anticipated reduction in the number of plans submitted to BOEM.

A **Federal Register** notice with a 60-day public comment period on this proposed ICR was published on March 3, 2023 (88 FR 13459). BOEM received one comment during the 60-day comment period, which was supportive of the Federal Government's reporting and burden updates. No burdens were changed in connection with the public comment.

BOEM is again soliciting comments on the proposed ICR. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record and will be available for public review on *www.reginfo.gov.* BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time. Even if BOEM withholds your information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA). If your submission is requested under FOIA, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations (43 CFR part 2) and applicable law.

In order for BOEM to consider withholding from disclosure your personal identifying information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Note that BOEM will make available for public inspection all comments in their entirety (except for proprietary information submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses).

BOEM protects proprietary information in accordance with FOIA (5 U.S.C. 552), the DOI's implementing regulations (43 CFR part 2), and 30 CFR part 550.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2023–14822 Filed 7–12–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2023–0013; EEEE500000 234E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0034]

Agency Information Collection Activities; Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf

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 September 11, 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–2023–0013 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 1014–0034 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 to oversee facility design, fabrication, installation, and safety management systems; ensure the safety of operations, including inspection programs and incident reporting and investigations; enforce compliance with all applicable safety, environmental, and other laws and regulations through enforcement actions (such as noncompliance notices, cessation orders, and certain lease suspensions); and oversee decommissioning activities. These responsibilities include enforcement provisions under the existing part 285, subpart D, various information submittal requirements under Subpart F, as well as provisions governing activities conducted under an approved plan, including the design, construction, operation, and decommissioning of facilities under subparts G, H, and I. The requirements for and standards of review regarding the Facility Design Report (FDR) and Facility Fabrication and Installation Report (FIR) are unchanged: the FDR and FIR will continue to be evaluated for consistency with the Construction and Operations Plan (COP) and applicable engineering standards. Decommissioning requirements related to rights-of-use and easement for alternate uses of existing OCS facilities (Alternate Use RUE) have also been transferred from the existing subpart J to part 285.

BSEE assumes the responsibility for ordering a lease or grant suspension when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life, property, the marine coastal, or human environment, or sites, structures, or objects of historical or archaeological significance. BSEE may also order a suspension when necessary to comply with a judicial decree. Under the rule, BSEE also assumes authority to issue cessation orders to address noncompliance on the part of the grantee or lessee.

The Department does not issue Suspensions for Alternate Use RUEs upon the grantee's request, but only by order. BOEM will retain authority to order suspensions required for National security, and BSEE will assume authority to order suspensions to address a threat of harm from continued operations. Either bureau may order a suspension when necessary to comply with a judicial decree. BSEE will order suspensions when operations are halted on the existing facility and BSEE determines continuation of the alternate use is unsafe or causes undue interference with the facility.

Part 285, subpart D, Lease and Grant Administration, includes the authority to issue notices of noncompliance (NONCs) and cessation orders, and to pursue civil penalties and recommend criminal penalties. BSEE assumes authority for oversight and enforcement of the design, construction, operation, and decommissioning phases of offshore wind development, as well as enforcement of requirements related to Alternate Use RUEs.

This ICR includes a new form:

Form BSEE–1835, *Notification of Noncompliance* (NONC).

BSEE will use the information to determine that respondents have corrected all Notifications of Noncompliance (NONCs) identified during inspections. Everything on the NONC 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 NONC has been corrected. Dependent on the severity of the non-compliance identified by the BSEE inspector, the responses are assigned different intervals and are described in the form table titled Enforcement Timeline:

1—At Time of Inspection
14—Within 14 Days
30—Within 30 Days
50—Prior to Returning to Service/Operation
60—Prior to Next Scheduled Maintenance
70—During Next Scheduled Maintenance
80—Prior to Next scheduled Audit
90—During Next Scheduled Audit

Title of Collection: 30 CFR part 285, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.

OMB Control Number: 1014–0034.

Form Number: Form BSEE–1835, *Notice(s) of Noncompliance.*

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Primary respondents comprise Federal OCS companies that submit unsolicited proposals or responses to **Federal Register** notices; or are lessees, designated operators, and ROW or RUE grant holders. Other potential respondents are companies or state and local governments that submit information or comments relative to alternative energy-related uses of the OCS; certified verification agents (CVAs); and surety or third-party guarantors.

Total Estimated Number of Annual Respondents: Currently there are approximately 47 Lessees in the OCS. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 103.

Estimated Completion Time per Response: Varies from 30 minutes to 6,000 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 8,908.

Respondent's Obligation: Responses are mandatory and are required to obtain or retain a benefit.

Frequency of Collection: generally occasional or annual.

Total Estimated Annual Nonhour Burden Cost: $1,908,000.

BURDEN TABLE

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour cost burdens	
Subpart A—General Provisions				
102; 105; 110	These sections contain general references to submitting comments, requests, applications, plans, notices, reports, and/or supplemental information for BSEE approval—burdens covered under specific requirements.			
103; 904	Request general departures not specifically covered elsewhere in part 285.	.5	6 requests	3
105(c)	Make oral requests or notifications and submit written follow up within 3 business days not specifically covered elsewhere in part 285.	1	2 requests	2
1016	Request reconsideration and/or hearing.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
111(b)(3); (b)(5); (b)(6)	Within 30 days of receiving bill, submit processing fee payments for BSEE document or study preparation to process applications and other requests.	.5	2 submissions	1
			2 payments × $4,000 = $8,000.	
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractors for all or part of any document, study, or other activity, to reduce BSEE processing costs.	2	2 requests	4
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity; and provide results to BSEE to reduce BSEE processing fee. Pay processing fee for all or part of any document, study, or other activity, and provide results to BSEE to reduce BSEE processing costs.	6,000	1 submission	6,000
			1 contractor payment × $950,000 = $950,000.	
111(b)(7)	Appeal BSEE estimated processing costs, decisions, or orders pursuant to 30 CFR 290.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
115	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1	1 request	1
118	Request appeal within 15 days of bid rejection, request reconsideration of bid decision or rejection.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subpart B—Reserved				
Subpart C—Reserved				
Subpart D—Lease and Grant Administration				
400; 401; 402 NONCs	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
401(b)	Take measures directed by BSEE in cessation order and submit reports to resume activities.	100	1 report	100
417(b)	Conduct, and if required pay for, site-specific study to evaluate cause of harm or damage; and submit copies of study and results, in format specified.	110	1 study/submission	110
			1 study × $950,000 = $950,000.	
437	Provide information for reconsideration of BSEE decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0

BURDEN TABLE—Continued

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
Subpart E—Reserved				
Subpart F—Plans and Information Requirements				
** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 285 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				
** 606; 614; 810	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of SAP, including required information to assist BSEE to comply with NEPA/CZMA such as hazard info, air quality, SMS, and all required information, certifications, requests, etc., in format specified.	48	2 SAPs	96
** 621; 632; 637; 810	If requesting an operations term for commercial lease, within time specified before the end of site assessment term, submit copies of COP, or FERC license application, including required information to assist BSEE to comply with NEPA/CZMA such as hazard info, air quality, SMS, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, requests, etc., in format specified.	200	2 COPs	400
** 641; 651; 810	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of GAP, including required information to assist BSEE to comply with NEPA/CZMA such as hazard info, air quality, SMS, and all required information, surveys and reports, certifications, project easements, requests, etc., in format specified.	48	2 GAPs	96
** 632(c); 907	Submit revised or modified COPs, including project easements, and all required additional information.	10	1 revised or modified COP.	10
602	Until BSEE releases financial assurance, respondents must maintain, and provide to BSEE if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.[2]	2	9 records/submissions.	18
615; 800(b)	Submit annual, or at other time periods as BSEE determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40	4 certifications	160
633; 800(b)	Submit annual, or at other time periods as BOEM/BSEE determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	45	9 certifications	405
636(a)	Notify BSEE in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1	2 notices	2
636(b)	Notify BSEE in writing no later than 30 days after completion of construction and installation activities.	1	2 notices	2
636(c)	Notify BSEE in writing at least 7 days before commencing commercial operations.	1	1 notice	1
651	Before beginning construction of OCS facility described in GAP, demonstrate operational SMS identified in GAP, submit initial findings.	27.5	2 notices	55
653(a), (b); 800(b)	Submit annual, or at other time periods as BSEE determines, GAP compliance certification, recommendations, reports, etc.	40	4 certifications	160

BURDEN TABLE—Continued

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
Subpart G—Facility Design, Fabrication, and Installation				
*** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				
*** 700(a) (1), (c); 701	Submit Facility Design Report, including copies of the cover letter, certification statement, and all required information (1–3 paper or electronic copies as specified).	200	1 report	200
*** 700(a)(2), (c); 702	Submit Fabrication and Installation Report, including copies of the cover letter, certification statement, and all required information, in format specified.	160	1 report	160
705(a); 707(a); 712	Certified Verification Agent (CVA) conducts independent assessment of the facility design and submits copies of all reports/certifications to lessee or grant holder and BSEE—interim reports if required, in format specified.	100 100	1 interim report 1 final report	100 100
705(a); 707(b); 708; 709; 710; 712; 637.	CVA conducts independent assessments/inspections on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified; and submits copies of all reports/certifications to lessee or grant holder and BSEE—interim reports if required, in format specified.	100 100	1 interim report 1 final report	100 100
*** 703; 705(a); 712; 815	CVA/project engineer monitors major project modifications and repairs and submits copies of all reports/certifications to lessee or grant holder and BSEE—interim reports if required, in format specified.	20 15	1 interim report 1 final report	20 15
705(b), (c)	Request waiver of CVA requirement in writing; lessee must demonstrate standard design and best practices.	16	1 waiver	16
706	Submit for approval with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination and required information.	6.5	2 nominations	13
708(b)(2)	Notify BSEE if modifications identified by CVA/project engineer are accepted.	1	1 notice	1
709(a); 710	Make fabrication quality control, installation towing, and other records available to CVA/project engineer for review (retention required by § 285.714).	1	3 records	3
713	Notify BSEE within 10 business days after commencing commercial operations.	1	1 notice	1
714; 703(b)	Until BOEM releases financial assurance, compile, retain, and make available to BSEE and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction [2].	100	1 lessee	100
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs				
802(a); 902(e)	Notify BSEE of archaeological resource within 72 hours of discovery.	3	1 notice	3
802(d)	If applicable, submit payment for BSEE costs in carrying out National Historic Preservation Act responsibilities.	.5	1 payment	1
810; 614(b); 632(b); 651	Submit safety management system description with the SAP, COP, or GAP.	30	2 submissions	60
813(b)(1)	Report within 24 hours when any required equipment taken out of service for more than 12 hours; provide written confirmation if reported orally.	.5 1	2 reports 1 written confirmation.	1 1

BURDEN TABLE—Continued

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
813(b)(3)	Notify BSEE when equipment returned to service; provide written confirmation if reported orally.	.5	2 notices	1
815	When required, analyze cable, P/L, or facility damage or failures to determine cause and as soon as available submit comprehensive written report.	1.5	1 report	2
816	Submit plan of corrective action report on observed detrimental effects on cable, P/L, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2	1 plan/report	2
822	Maintain records of design, construction, operation, maintenance, repairs, and investigation on or related to lease or ROW/RUE area; make available to BSEE for inspection [2].	1	4 records retention	4
823	Request reimbursement within 90 days for food, quarters, and transportation provided to BSEE reps during inspection.	2	1 request	2
824(a)	Develop annual self-inspection plan covering all facilities; retain with records and make available to BSEE upon request.	24	2 plans	48
824(b)	Conduct annual self-inspection and submit report by November 1	36	2 reports	72
825	Based on API RP 2A–WSD, perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to BSEE upon request..	60	2 assessments/actions.	120
830(a), (c); 831 thru 833	Immediately report incidents to BSEE via oral communications, submit written follow-up report within 15 business days after the incident, and submit any required additional information..	.5 Oral 4 Written	2 incidents 1 incident	1 4
830(d)	Report oil spills as required by BSEE 30 CFR part 254.	2	1 report	2
Subpart I—Decommissioning				
**** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in parts 285.				
**** 902; 905, 906; 907; 908(b), (c); 909; 638(a).	Submit for approval, in format specified, copies of the SAP, COP, or GAP decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities, or 90 days after cancellation, relinquishment, or other termination of lease or grant. Include documentation of coordination efforts regarding requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information/evidence requested or modify and resubmit application.	19	1 application	19
902(d); 908(a)	Notify BSEE at least 60 days before commencing decommissioning activities.	1	1 notice	1
910(b)	Within 60 days after removing a facility, verify to BSEE that site is cleared.	1	1 verification	1
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report.	8	1 report	8
BSEE does not anticipate decommissioning activities for at least 5 years, so the requirements have been given a minimal burden.				
Total Burden			103 Responses	8,908 Hours.
			$1,908,000 Non-Hour Costs 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. 2023–14812 Filed 7–12–23; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1347]

Certain Location-Sharing Systems, Related Software, Components Thereof, and Products Containing Same; Notice of Commission Determination Not To Review Three Initial Determinations Terminating the Investigation as to Certain Respondents and in Its Entirety; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review three initial determinations (''IDs'') of the presiding administrative law judge (''ALJ'') that terminate the above-captioned investigation as to: (1) respondent OnePlus Technology (Shenzhen) Co., Ltd. based on settlement (Order No. 24); (2) respondents Xiaomi Corporation, Xiaomi H.K. Ltd., Xiaomi Communications Co., Ltd., and Xiaomi Inc. based on settlement (Order No. 25); and (3) the remaining respondents based on withdrawal of the complaint (Order No. 26). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. 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, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 30, 2022, based on a complaint filed by Advanced Ground Information Systems, Inc. of Jupiter, Florida and AGIS Software Development LLC of Marshall, Texas (collectively, ''AGIS''). 87 FR 80568–69 (Dec. 30, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain location-sharing systems, related software, components thereof, and products containing same by reason of the infringement of certain claims of U.S. Patent Nos. 8,213,970 (''the '970 patent''); 9,445,251 (''the '251 patent''); 9,467,838 (''the '838 patent''); 9,749,829 (''the '829 patent''); and 9,820,123 (''the '123 patent''). *Id.* at 80568. The complaint further alleges that a domestic industry exists. *Id.*

The notice of investigation named 26 respondents: (1) Kyocera Corporation (''Kyocera'') of Kyoto, Japan; (2) OnePlus Technology (Shenzhen) Co., Ltd. (''OnePlus'') of Shenzhen, Guangdong, China; (3) Xiaomi Corporation of Grand Cayman, Cayman Islands; Xiaomi H.K. Ltd. of Kowloon City, Hong Kong; Xiaomi Communications Co., Ltd. of Beijing, China; and Xiaomi Inc. of Beijing, China (collectively, ''Xiaomi''); and (4) Google LLC of Mountain View, California; Samsung Electronics, Co., Ltd. of Suwon, Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; TCL Technology Group Corporation of Huizhou, Guangdong, China; TCL Electronics Holdings Limited of Hong Kong Science Park, Hong Kong; TCL Communication Technology Holdings Limited of Hong Kong Science Park, Hong Kong; TCT Mobile (US) Inc. of Irvine, California; Lenovo Group Ltd. of Beijing, China; Lenovo (United States) Inc. of Morrisville, North Carolina; Motorola Mobility LLC of Chicago, Illinois; HMD Global of Espoo, Finland; HMD Global OY of Espoo, Finland; HMD America, Inc. of Miami, Florida; Sony Corporation of Tokyo, Japan; Sony Mobile Communications, Inc. of Tokyo, Japan; ASUSTek Computer Inc. of Taipei, Taiwan; ASUS Computer International of Fremont, California; BLU Products of Doral, Florida; Panasonic Corporation of Osaka, Japan; Panasonic Corporation of North America of Secaucus, New Jersey (collectively, the ''Remaining Respondents''). *Id.* at 80569. The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

On February 17, 2023, the Commission amended the complaint and notice of investigation to substitute Panasonic Holdings Corporation of Osaka, Japan, in place of named respondent Panasonic Corporation. Order No. 7 (Feb. 1, 2023), *unreviewed by* 88 FR 11477 (Feb. 23, 2023).

On June 6, 2023, the Commission terminated the investigation as to the following asserted claims based on withdrawal: (i) claim 2 of the '970 patent; (ii) claims 1–2, 7–8, 23, 25, 29–30, and 35 of the '251 patent; (iii) claims 3, 5–8, 10, 16, 19, 38, 40, 55–56, 61–64, 68, 71–72, 80 and 84 of the '838 patent; (iv) claims 1, 8, 34, and 41 of the '829 patent; and (v) claim 14 of the '123 patent. Order No. 16 (May 17, 2023), *unreviewed by* Comm'n Notice (June 6, 2023).

On June 27, 2023, the Commission terminated the investigation as to Kyocera based on settlement. Order No. 19, *unreviewed by* Comm'n Notice (June 27, 2023).

On June 14, 2023, AGIS and OnePlus filed a joint motion to terminate the investigation as to OnePlus based on a settlement agreement. On June 16, 2023, OUII filed a response supporting the motion. No other responses to the motion were filed.

On June 15, 2023, AGIS and Xiaomi filed a joint motion to terminate the investigation as to Xiaomi based on a settlement agreement. On June 16, 2023, OUII filed a response supporting the motion. No other responses to the motion were filed.

On June 15, 2023, AGIS filed a motion to terminate the investigation as to the Remaining Respondents based on withdrawal of the complaint. On June 16, 2023, OUII filed a response supporting the motion. On June 20, 2023, the Remaining Respondents filed a response stating that they do not oppose the motion. No other responses to the motion were filed.

On June 20, 2023, the ALJ issued all three subject IDs (Order Nos. 24, 25, and 26). Order Nos. 24 and 25 grant the unopposed joint motions to terminate the investigation as to OnePlus and Xiaomi, respectively, finding that the motions comply with the requirements of Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)), and that the proposed settlements do not adversely affect the public interest in accordance with Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)). Order No. 24 at 2–3; Order No. 25 at 2–3. Order No. 26 grants the unopposed motion to terminate the

investigation as to the Remaining Respondents and thus in its entirety, finding that the motion complies with the requirements of Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)), and that ''no extraordinary circumstances exist that would prevent the requested termination of this Investigation.'' Order No. 26 at 2–3. No petitions for review of the subject IDs were filed.

The Commission has determined not to review the subject IDs. The investigation is terminated as to OnePlus, Xiaomi, and the Remaining Respondents and, thus, in its entirety.

The Commission vote for this determination took place on July 7, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 10, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14840 Filed 7–12–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–893 (Fourth Review)]

Honey From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on honey from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 5, 2023, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 12992, March 1, 2023) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on August 23, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 31, 2023 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 31, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 10, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14874 Filed 7–12–23; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Chairman David S. Johanson voted to conduct a full review.

[3] The Commission has found the responses submitted on behalf of the American Honey Producers Association and the Sioux Honey Association to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–576–577 and 731–TA–1362–1367 (Review)]

Cold-Drawn Mechanical Tubing From China, Germany, India, Italy, South Korea, and Switzerland; 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 of the countervailing duty orders on certain cold-drawn mechanical tubing of carbon and alloy steel (''cold-drawn mechanical tubing'') from China and India and the antidumping duty orders on cold-drawn mechanical tubing from China, Germany, India, Italy, South Korea, and Switzerland would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: July 7, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 24442, April 20, 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 the 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 the 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 the 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 the 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 the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the 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 the reviews will be placed in the nonpublic record on November 13, 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 November 28, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 20, 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 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 November 22, 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 November 27, 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. November 20, 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. on December 5, 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 December 5, 2023. On January 5, 2024, 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 January 10, 2024, 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.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 10, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14873 Filed 7–12–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–033]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 19, 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–573–574 and 731–TA–1349–1358 (Review)(Wire Rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, United Arab Emirates, and United Kingdom). The Commission currently is scheduled to complete and file its determination and views on July 27, 2023.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 11, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14962 Filed 7–11–23; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—1EdTech Consortium, Inc.

Notice is hereby given that, on June 8, 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''), 1EdTech Consortium, Inc. (''EdTech Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, California Department of Education, Sacramento, CA; Cherokee County School District, Canton, GA; Common Goods Learning Tools, Portland, OR; Dorchester School District Two, Summerville, SC; EdisonLearning, Inc., Ft. Lauderdale, FL; Fresno Unified School District, Fresno, CA; LINC, Miami Lakes, FL; Owensboro Public Schools, Owensboro, KY; *Tutor.com,* New York, NY; University of Nottingham Online, Nottingham, UNITED KINGDOM; Cypress-Fairbanks ISD, Houston, TX; Fairfax County Public Schools, Falls Church, VA; Goose Creek CISD, Baytown, TX; Incident IQ, Atlanta, GA; Little Rock School District, Little Rock, AR; National Heritage Academies, Grand Rapids, MI; Oklahoma City Public Schools, Oklahoma City, OK; Pearl, Richmond, VA; Rockwood School District, Eureka, MO; Round Rock Independent School District, Round Rock, TX; Subject Technologies, Beverly Hills, CA; and Utah State Board of Education, Salt Lake City, UT have been added as parties to this venture.

Also, KION, Istanbul, TURKEY; U Missouri, Columbia, MO; Effingham, Springfield, GA; Blackboard, Washington, DC; Virginia Virtual, Floyd, VA; VerifyEd, Dorset, UNITED KINGDOM; Gutenberg, Boston, MA; Class Technologies, Raleigh, NC; Paper, Montreal, CANADA; South Orange County Community College District, Mission Viejo, CA; LearnPlatform, Raleigh, NC; Conexus, Drammen, NORWAY; IBM Corp Training; Cambridge, MA; Classera, San Francisco, CA; Colorado Virtual Academy, Lakewood, CO; Education Advanced, Tyler, TX; Tyler Technologies, St. Louis, MO; Aspire Ability, Payson, UT; Gooru, Redwood City, CA; UMass Global, Irvine, CA; Klassroom SAS, Paris, FRANCE; RethinkED, New York, NY; Signature Digital, Leicester, UNITED KINGDOM; Pivotal EdTech, Dublin, IRELAND; LearningMate, Princeton, NJ; 2U, Lanham, MD; Northcentral, San Diego, CA; Spring-Ford, Royersford, PA; Allegany County School District, Cumberland, MD; and Neosho, Neosho, 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 EdTech Consortium intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, EdTech Consortium 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 13, 2000 (65 FR 55283).

The last notification was filed with the Department on January 19, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 2023 (88 FR 16458).

Suzanne Morris,

Deputy Director Civil, Enforcement Operations, Antitrust Division.

[FR Doc. 2023–14887 Filed 7–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 5680–2023]

Attorney General Designations of the European Union, Iceland, Liechtenstein, and Norway as "Qualifying States"

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with an Executive order, the Attorney General has designated the European Union, Iceland, Liechtenstein, and Norway as ''qualifying states.''

DATES: July 13, 2023. The designations are to become effective on the date the European Commission adopts an adequacy decision for the Data Privacy Framework for the European Union (''EU'') and the United States of America (''U.S.'' or the ''United States'').

FOR FURTHER INFORMATION CONTACT: J. Bradford Wiegmann, Deputy Assistant Attorney General, National Security Division, United States Department of Justice, Washington, DC 20530; telephone: (202) 514–1057. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Executive Order 14086 of October 7, 2022 (Enhancing Safeguards for United States Signals Intelligence Activities), establishes a two-level redress mechanism for the review of qualifying complaints by individuals, filed through an appropriate public authority in a ''qualifying state'' and alleging certain violations of U.S. law concerning signals intelligence activities. A country or regional economic integration organization may be designated as a qualifying state by the Attorney General if he determines, in consultation with the Secretary of State, the Secretary of Commerce, and the Director of National Intelligence, that it meets the requirements set forth in section 3(f) of Executive Order 14086. The Attorney General has made those determinations on the basis of the information contained in the ''Memorandum in Support of Designation of the European Union and Iceland, Liechtenstein and Norway as Qualifying States Under Executive Order 14086'' prepared by the National Security Division of the Department of Justice, *available at https://www.justice.gov/opcl/redress-data-protection-review-court.*

Designation of the European Union, Iceland, Liechtenstein, and Norway Pursuant to Section 3(f) of Executive Order 14086

Consistent with section 3(f) of Executive Order 14086, and on the basis of the information contained in the memorandum referenced above, the Attorney General has determined, in consultation with the Secretary of State, the Secretary of Commerce, and the Director of National Intelligence, that:

(1) The laws of the EU or its member countries and those of Iceland, Liechtenstein, and Norway (together, the ''European Economic Area'') require appropriate safeguards in the conduct of signals intelligence activities for United States persons' personal information that is transferred from the United States to the territory of the member countries of the European Economic Area;

(2) The EU, its member countries, and Iceland, Liechtenstein, and Norway, are anticipated, pursuant to an adequacy decision to be adopted by the European Commission, to permit the transfer of personal information for commercial purposes between the territory of the member countries of the European Economic Area and the territory of the United States; and

(3) Designation of the EU, Iceland, Liechtenstein, and Norway would advance the national interests of the United States.

The Attorney General designated the EU, Iceland, Liechtenstein, and Norway as qualifying states for purposes of eligibility for the redress mechanism established in section 3 of Executive Order 14086, with the designations to become effective on the date the European Commission adopts an adequacy decision for the EU–U.S. Data Privacy Framework.

Dated: June 30, 2023.

Merrick B. Garland,

Attorney General.

[FR Doc. 2023–14848 Filed 7–12–23; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0111]

Agency Information Collection Activities; Proposed Collection Comments Requested; Revision of a Currently Approved Collection; National Crime Victimization Survey (NCVS)

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 11, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer Truman, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Jennifer.Truman@usdoj.gov;* telephone: 202–307–0765).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The National Crime Victimization Survey (NCVS) provides national data on the level and change of criminal victimization both reported and not reported to police in the United States. The 2024 NCVS data collection will be a split sample design with the new and current instrument in order to phase-in the new NCVS instrument. The new NCVS instrument improves measurement of victimization and

incident characteristics and includes two new periodic modules on police performance and community safety.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* National Crime Victimization Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers for the questionnaire are the NCVS–1 and NCVS–2. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected public: Persons 12 years or older living in sampled households located throughout the United States. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated annual number of respondents is 182,504. The time per response is 25 minutes to complete the current NCVS instrument. The time per response is 32 minutes to complete the new NCVS instrument. It will take the average non-interviewed respondent (*e.g.,* nonrespondent) an estimated 7 minutes to respond; the average follow-up interview is estimated at 15 minutes; and the average follow-up for a non-interview is estimated at 1 minute.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 124,888.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
Interviewed—current NCVS	57,490	2	114,980	25	47,912
Interviewed—new NCVS	57,490	2	114,980	32	61,319
Noninterviewed	57,347	2	114,694	7	13,385
Reinterview (Interviews)	9,011	1	9,011	15	2,253
Reinterview (Noninterviews)	1,166	1	1,166	1	19
Unduplicated Totals	*182,504*		*354,831*		*124,888*

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: July 10, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–14854 Filed 7–12–23; 8:45 am]

BILLING CODE 4410–18–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–181 and CP2023–185]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 17, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–181 and CP2023–185; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 33 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 7, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 17, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–14872 Filed 7–12–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 13, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 7, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 33 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–181, CP2023–185.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–14821 Filed 7–12–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 88 FR 43639, July 10, 2023.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, July 13, 2023 at 2:00 p.m.

CHANGES IN THE MEETING: The following additional matter will also be considered during the Closed Meeting:

- Consideration of amici participation.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: July 11, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–14986 Filed 7–11–23; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Colorado Air and Space Port, Watkins, Colorado

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release and sale of a 17,803 square foot parcel of land at the Colorado Air and Space Port.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Mr. Todd Minnich, Civil Engineer, Denver Airports District Office, *todd.e.minnich@faa.gov,* (303) 342–1279.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Kloska, Director, Colorado Air and Space Port, 5200 Front Range Parkway, Watkins, CO 80137, *JKloska@adcogov.org,* (720) 523–7310; or Mr. Todd Minnich, Civil Engineer, Denver Airports District Office, *todd.e.minnich@faa.gov,* (303) 342–1279. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Colorado Air and Space Port under the provisions of 49 U.S.C. 47107(h)(2). The proposal consists of 17,803 square feet of land located on the North side of the airport, shown as Parcel 7B on the Airport Layout Plan. The parcel lies on the Northeast corner of East 56th Avenue and Imboden Road. The FAA concurs that the parcel is no longer needed for airport purposes. The proposed use of this property is compatible with existing airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, as published in the **Federal Register** on February 16, 1999.

Issued in Denver, Colorado.

June 28, 2023.

John P. Bauer,

Manager, Denver Airports District Office.

[FR Doc. 2023–14871 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–0584; Summary Notice No. 2023–24]

Petition for Exemption; Summary of Petition Received; Executive Jet Management, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 2, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0584 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jimeca Callaham, (202) 267–0312, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2023–0584.

Petitioner: Executive Jet Management.

Section(s) of 14 CFR Affected: §§ 135.337(a)(1), 135.337(b)(1), 135.337(b)(2), 135.339(e)(3), and 135.339(e)(4).

Description of Relief Sought: Executive Jet Management, Inc. (EJM) has requested an exemption from 14 CFR 135.337(a)(1), 135.337(b)(1), 135.337(b)(2), 135.339(e)(3), and 135.339(e)(4) to the extent necessary to permit authorized Company Check Pilots to conduct Section 135.299 Pilot in Command Line Checks from any EJM aircraft's observation seat station.

[FR Doc. 2023–14883 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1489]

Notice of Intent To Designate as Abandoned Aviation Composite Technologies, Inc., Supplemental Type Certificate SH4537SW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to designate as abandoned Aviation Composite Technologies, Inc., Supplemental Type Certificate SH4537SW; request for comments.

SUMMARY: This notice announces the FAA's intent to designate Aviation Composite Technologies, Inc., Supplemental Type Certificate (STC) No. SH4537SW as abandoned and make the related engineering data available upon request. The FAA has received a request to provide engineering data concerning this STC. The FAA has been unsuccessful in contacting Aviation Composite Technologies, Inc., concerning the STC. This action is intended to enhance aviation safety.

DATES: The FAA must receive all comments by January 9, 2024.

ADDRESSES: You may send comments on this notice by any of the following methods:

• *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Trong Pham, AIR–767, FAA, Central Certification Branch, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

• *Email: Trong.Pham@faa.gov.* Include ''Docket No. FAA–2023–1489'' in the subject line of the message.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Trong Pham, Program Manager, AIR–767, FAA, Central Certification Branch, 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–5137, email *Trong.Pham@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested parties to provide comments, written data, views, or arguments relating to this notice. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2023–1489'' at the beginning of your comments. The FAA will consider all comments received on or before the closing date. All comments received will be available in the docket for examination by interested persons.

Background

The FAA is posting this notice to inform the public of the intent to designate as abandoned Aviation Composite Technologies, Inc., STC No. SH4537SW, for the installation of a radome in Bell Model 206A, 206B, 206L, and 206L–1 helicopters, and subsequently release the related engineering data.

The FAA has received a third-party request for the release of the aforementioned engineering data under the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552. The FAA cannot release commercial or financial information under FOIA without the permission of the data owner. However, in accordance with title 49 of the United States Code section 44704(a)(5), the FAA can make STC ''engineering data'' in possession of the FAA available upon request if the FAA determines that the STC has been inactive for three years or more and, using due diligence, the FAA is unable to locate the owner of record or the owner of record's heir, and the availability of such data will enhance aviation safety. There has been no activity on this STC for more than three years.

On December 15, 2022, the FAA sent a registered letter to Mr. Stephen B. Squires, President of Aviation Composites Technologies, Inc., at its last known address, 601–2 Hawwood Road, Suite 132, Bedford, TX 76021. The letter informed Aviation Composite Technologies, Inc., that the FAA had received a request for engineering data related to STC No. SH4537SW and was conducting a due diligence search to determine whether the STC was inactive and may be considered abandoned. The letter further requested Aviation Composite Technologies, Inc., to respond in writing within 60 days and state whether it is the holder of the STC. The FAA also attempted to make contact with Aviation Composites Technologies, Inc., by other means, including telephone communication, without success.

Information Requested

If you are the owner or heir or a transferee of STC No. SH4537SW or have any knowledge regarding who may now hold STC No. SH4537SW please contact Trong Pham using a method described in this notice under **FOR FURTHER INFORMATION CONTACT**. If you are the heir of the owner, or the owner by transfer, of STC No. SH4537SW, you must provide a notarized copy of your government-issued identification with a letter and background establishing your ownership of the STC and, if applicable, your relationship as the heir to the deceased holder of the STC.

Conclusion

If the FAA does not receive any response by January 9, 2024, the FAA will consider STC No. SH4537SW abandoned, and the FAA will proceed

with the release of the requested data. This action is for the purpose of maintaining the airworthiness of an aircraft and enhancing aviation safety.

Issued on July 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–14852 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–1814; Summary Notice No. 2023–15]

Petition for Exemption; Summary of Petition Received; Bewired USA LLC dba SkyEagle Aviation Academy

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 2, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1814 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean O'Tormey at 202–267–4044, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–1814.

Petitioner: Bewired USA LLC dba SkyEagle Aviation Academy.

Section(s) of 14 CFR Affected: § 141.33(a)(4)(ii).

Description of Relief Sought: Petitioner seeks relief from § 141.33(a)(4)(ii) in order to allow Mr. Alexey Belkin to substitute his flight and training experience gained under International Civil Aviation Organization (ICAO) and European Union Aviation Safety Aviation (EASA) regulations to satisfy the § 141.33(a)(4)(ii) requirement of 2 years of experience as a pilot in command in operations conducted under § 91.1053(a)(2)(i) or § 135.243(a)(1) of this chapter, or as a pilot in command or second in command in any operation conducted under part 121.

[FR Doc. 2023–14884 Filed 7–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

ACTION: Notice.

SUMMARY: The United States Mint is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) as a member to represent the interests of the general public in the coinage of the United States.

DATES: *Application Deadline:* 5 p.m. (EDT), September 11, 2023.

ADDRESSES: *Receipt of Applications:* Any member of the public wishing to be considered for appointment to the CCAC should submit a resume and cover letter describing his or her reasons for seeking and qualifications for membership, by email to *info@ccac.gov,* Attn: Jennifer Warren. The deadline to email submissions is no later than 5 p.m. (EDT) on September 11, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; *jennifer.warren@usmint.treas.gov* or 202–354–7208.

SUPPLEMENTARY INFORMATION: The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of 11 voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of his or her education, training, or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as

an officer or employee of the Federal Government, and applicants must be a United States citizen.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately four to six times per year. The United States Mint is responsible for providing the necessary support, technical services, and advice to the CCAC. CCAC members are not paid for their time or services; however, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is interested in candidates who have demonstrated interest and a commitment to actively participate in meetings and activities, and a demonstrated understanding of the role of the CCAC and the obligations of a Special Government Employee; possess demonstrated leadership skills in their fields of expertise or discipline; possess a demonstrated desire for public service and have a history of honorable professional and personal conduct, as well as successful standing in their communities; and who are free of professional, political, or financial interests that could negatively affect their ability to provide impartial advice.

(Authority: 31 U.S.C. 5135(b))

Eric Anderson,

Executive Secretary United States Mint.

[FR Doc. 2023–14808 Filed 7–12–23; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

Vol. 88 Thursday,

No. 133 July 13, 2023

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56, 57, 60, et al.

Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 60, 70, 71, 72, 75, and 90

[Docket No. MSHA–2023–0001]

RIN 1219–AB36

Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) proposes to amend its existing standards to better protect miners against occupational exposure to respirable crystalline silica, a carcinogenic hazard, and to improve respiratory protection for all airborne hazards. MSHA has preliminarily determined that under the Agency's existing standards, miners at metal and nonmetal mines and coal mines face a risk of material impairment of health or functional capacity from exposure to respirable crystalline silica. MSHA proposes to set the permissible exposure limit of respirable crystalline silica at 50 micrograms per cubic meter of air (μg/m^3) for a full shift exposure, calculated as an 8-hour time-weighted average, for all miners. MSHA's proposal would also include other requirements to protect miner health, such as exposure sampling, corrective actions to be taken when miner exposure exceeds the permissible exposure limit, and medical surveillance for metal and nonmetal miners. Furthermore, the proposal would replace existing requirements for respiratory protection and incorporate by reference *ASTM F3387–19 Standard Practice for Respiratory Protection.* The proposed uniform approach to respirable crystalline silica occupational exposure and improved respiratory protection for all airborne hazards would significantly improve health protections for all miners and lower the risk of material impairment of health or functional capacity.

DATES: *Written comments.* Written comments, including comments on the information collection requirements described in this preamble, must be received or postmarked by midnight Eastern Time on August 28, 2023.

Public Hearings. MSHA will hold two public hearings on August 3, 2023 in Arlington, Virginia and August 21, 2023 in Denver, Colorado. For more information on the public hearings, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: All submissions must include RIN 1219–AB36 or Docket No. MSHA–2023–0001. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

You may submit comments and informational materials, clearly identified by RIN 1219–AB36 or Docket Id. No. MSHA–2023–0001, by any of the following methods:

Federal E-Rulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.

Email: zzMSHA-comments@dol.gov. Include ''RIN 1219–AB36'' in the subject line of the message.

Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5450.

Hand Delivery or Courier: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Before visiting MSHA in person, call 202–693–9440 to make an appointment. Special health precautions may be required.

Facsimile: 202–693–9441. Include ''RIN 1219–AB36'' in the subject line of the message.

Information Collection Requirements. Comments concerning the information collection requirements of this proposed rule must be clearly identified with ''RIN 1219–AB36'' or ''Docket No. MSHA–2023–0001,'' and sent to MSHA by one of the methods previously explained.

Docket. For access to the docket to read comments and background documents, go to *https://www.regulations.gov.* The docket can also be reviewed in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. Before visiting MSHA in person, call 202–693–9440 to make an appointment. Special health precautions may be required.

Email Notification. To subscribe to receive an email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://public.govdelivery.com/accounts/USDOL/subscriber/new.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at: *silicaquestions@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

MSHA will hold two public hearings to provide industry, labor, and other interested parties with an opportunity to present oral statements, written comments, and other information on the proposed rule. The public hearings will begin at 9 a.m. local time and end after the last presenter speaks on the following dates:

Date	Location	Contact number
August 3, 2023	Mine Safety and Health Administration, 201 12th Street South, Room 7W202, Arlington, VA 22202	202–693–9440
August 21, 2023	Denver Federal Center, Building 25 Lecture Hall, West 6th Avenue and Kipling Street, Denver, CO 80225	202–693–9440

The public hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply.

A verbatim transcript of each of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcripts will be available to the public. MSHA will make the transcript of the hearings available at *http://www.regulations.gov* and on MSHA's website at *https://arlweb.msha.gov/currentcomments.asp.*

MSHA will accept post-hearing written comments and other appropriate information for the record from any interested party, including those not presenting oral statements, received by

midnight (Eastern Time) on August 28, 2023.

Pre-registration is not required to attend the hearings. Interested parties may attend the hearings virtually or in person. Interested parties who intend to present testimony at the hearings are asked to register in advance on MSHA's website (*http://www.msha.gov*). Speakers will be called in the order in which they signed up. Those who do not register in advance will have an opportunity to speak after all those who pre-registered have spoken. You may submit hearing testimony and documentary evidence, identified by docket number (MSHA–2023–0001), by any of the methods previously identified. Additional information on how to access the public hearings will be posted when available at *https://www.msha.gov/regulations/rulemaking.*

The preamble to the proposed standard follows this outline:

I. Introduction
II. Request for Comments
III. Background
IV. Existing Standards and Implementation
V. Health Effects Summary
VI. Preliminary Risk Analysis Summary
VII. Section-by-Section Analysis
VIII. Technological Feasibility
IX. Summary of Preliminary Regulatory Impact Analysis and Regulatory Alternatives
X. Initial Regulatory Flexibility Analysis
XI. Paperwork Reduction Act
XII. Other Regulatory Considerations
XIII. References Cited in the Preamble
XIV. Appendix

Acronyms and Abbreviations

COPD chronic obstructive pulmonary disease
ESRD end-stage renal disease
FEV forced expiratory volume
FVC forced vital capacity
L/min liter per minute
mg milligram
mg/m³ milligrams per cubic meter
mL milliliter
μg/m³ micrograms per cubic meter
MNM metal and nonmetal
NMRD nonmalignant respiratory disease
PEL permissible exposure limit
PMF progressive massive fibrosis
RCMD respirable coal mine dust
REL recommended exposure limit
SiO_2 silica
TB tuberculosis
TLV® Threshold Limit Value
TWA time-weighted average

I. Introduction

With the passage of the Federal Mine Safety and Health Act of 1977 (Mine Act), Congress declared that ''the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner[.]'' 30 U.S.C. 801(a). In furtherance of that clear guiding principle, this proposed rule promotes MSHA's mission and statutory mandate to prevent death, illness, and injury from mining and promote safe and healthful workplaces for U.S. miners. This proposal provides the public with the opportunity to comment on the Agency's proposed uniform and streamlined regulatory approach to lowering miners' exposure to respirable crystalline silica and improving respiratory protection.

Exposure to silica dust causes adverse health effects, including silicosis (acute silicosis, accelerated silicosis, simple chronic silicosis, and progressive massive fibrosis (PMF)), nonmalignant respiratory diseases (NMRD) (*e.g.,* emphysema and chronic bronchitis), lung cancer, and renal diseases. Each of these effects is chronic, irreversible, and potentially disabling or fatal. Silica dust is generated in most mining activities, including cutting, sanding, drilling, crushing, grinding, sawing, scraping, jackhammering, excavating, and hauling materials that contain silica, and is found in all mines—underground and surface metal and nonmetal (MNM) and coal mines. In a mining context, silica exposures may occur in respirable dust together with exposures to other airborne contaminants and combustion biproducts.

MSHA's existing standards, established in the early 1970s, help protect miners from the most dangerous levels of exposure to respirable crystalline silica. However, since their promulgation, scientific understanding of respirable crystalline silica toxicity has advanced, and the National Institute for Occupational Safety and Health (NIOSH) has recommended a respirable crystalline silica exposure level of 50 μg/m³ for workers. In 2016, the Occupational Safety and Health Administration (OSHA) established a permissible exposure limit (PEL) of 50 μg/m³ in many industry sectors that it regulates.

To provide miners with exposure limits consistent with workers in other industries and NIOSH's recommendation, and to improve miners' health, MSHA proposes to lower its existing exposure limits to 50 μg/m³ for respirable crystalline silica in MNM and coal mines. MSHA considered exposure limits below 50 μg/m³. However, MSHA believes, based on a review of the Agency's available silica sample data, that an exposure limit of 25 μg/m³ may not be achievable for all mines. The proposed PEL would be expressed as a full-shift exposure, calculated as an 8-hour time-weighted average (TWA). Importantly, a uniform proposed PEL for all mines would make compliance simpler—especially for coal mines by eliminating the existing respirable dust standard when quartz is present.

To meet the requirements of the proposed PEL, mine operators would have to implement engineering controls, followed by administrative controls if supplementary protection is needed. Engineering controls, which are most effective, are designed to remove or reduce the hazard at the source and could include the installation of proper ventilation systems, use of water sprays or wetting agents to suppress airborne contaminants, installation of machine-mounted dust collectors to capture respirable crystalline silica and other contaminants, and the installation of control booths or environmental cabs to enclose equipment operators. Administrative controls, which are often less effective than engineering controls, are designed to change the way miners work. One example would be ensuring that miners safely clean dust off their work clothes so that they are not exposed to respirable dust after their shift ends.

MSHA's proposed rule would further protect all miners by requiring exposure sampling and corrective actions when miners' exposures exceed the proposed PEL, as well as periodic sampling when miners' exposure levels meet or exceed the proposed action level. The proposed rule also includes medical surveillance requirements for MNM miners (medical surveillance requirements already exist for coal miners). Proposed medical examinations would include chest X-rays, spirometry, symptom assessment, and occupational history and would be provided at no cost to the miner.

Finally, the proposed rule would incorporate by reference an updated respiratory protection standard, ASTM F3387–19, ''*Standard Practice for Respiratory Protection*'' (ASTM F3387–19), for respirable crystalline silica and all other regulated airborne contaminants. This voluntary consensus standard represents up-to-date advancements in respiratory protection technologies, practices, and techniques, including proper selection, use, and maintenance of respirators. The proposed incorporation of ASTM F3387–19 by reference would better protect all miners from airborne hazards. However, respiratory protection should only be relied upon as an exposure control measure in limited situations and on a temporary basis, and to supplement engineering controls, followed by administrative controls.

Taken together, all elements of the proposed rule are technologically and economically feasible. MSHA's 2014

final rule, *Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors* (Coal Dust Rule) improved health protections for coal miners by lowering exposure limits to respirable coal mine dust and establishing sampling requirements that included the use of a Continuous Personal Dust Monitor (79 FR 24813, May 1, 2014). Coal mine operators have generally achieved compliance with the respirable dust standards primarily by implementing or adjusting existing engineering controls. Coal mine operators' sampling data and MSHA's compliance data show that operators have lowered coal miners' exposures to respirable coal mine dust and to respirable crystalline silica. Data show that average exposures in coal mines are below the proposed PEL of 50 μg/m^3, and therefore, corrective measures would often not be needed. Similarly, for MNM miners, MSHA data also show that most exposures to respirable crystalline silica are below the proposed PEL. However, at MNM and coal mines where elevated exposures are found, operators will be able to reduce exposures to the proposed PEL through some combination of properly maintaining existing engineering controls, implementing new engineering controls, and requiring safe work practices. Mines and laboratories will be able to meet exposure monitoring requirements with existing validated and widely used sampling and analytical methods. The proposed revision to the respiratory protection standard is technologically feasible because MSHA's existing respiratory protection requirements for selecting, fitting, using, and maintaining respiratory protection include similar requirements.

MSHA's Preliminary Risk Analysis (PRA) suggests that exposure consistent with a lower proposed PEL of 50 μg/m^3 would deliver many health benefits to miners who currently experience exposures above the proposed PEL by reducing the likelihood of respirable crystalline silica-related diseases. For those miners working only under the proposed PEL, MSHA estimates that the proposed rule would result in a total of 799 lifetime avoided deaths (63 in coal and 736 in MNM mines) and 2,809 lifetime avoided morbidity cases (244 in coal and 2,566 in MNM mines) over a 60-year period. MSHA expects full implementation and compliance to reduce lifetime mortality risk due specifically to silica exposures by 9.5 percent and to reduce silicosis morbidity risk by 41.9 percent. The latter statistic is particularly important to coal miners given surveillance findings noted by the National Academies of Sciences, Engineering, and Medicine that severe pneumoconiosis where respirable crystalline silica is likely an important contributor is presenting in relatively young miners, sometimes in their late 30's and early 40's.

MSHA's economic analysis estimates that the proposed respirable crystalline silica rule would cost an average of $56.1 million per year in 2021 dollars at an undiscounted rate, $57.6 million at a 3 percent discount rate, and $59.9 million at a 7 percent discount rate. Based on the results of the Preliminary Regulatory Impact Analysis (PRIA), MSHA estimates that the proposed rule's benefits would exceed its costs, with or without discount rates. Monetized benefits are estimated from avoidance of 410 deaths related to NMRD, silicosis, ESRD, and lung cancer and 1,420 cases of silicosis associated with silica exposure over the first 60-year period after the promulgation of the final rule. The estimated annualized net benefit is approximately $212.8 million at an undiscounted rate, $118.2 million at a 3 percent discount rate, and $36.3 million at a 7 percent discount rate.

A rule is significant under Executive Order 12866 Section 3(f)(1), as amended by E.O. 14094, if it is likely to result in ''an annual effect on the economy of $200 million or more or . . . adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safely, or State, local, or tribal governments or communities.'' The Office of Management and Budget has determined that the proposed rule is significant within the meaning of E.O. 12866 Section 3(f)(1).

The proposed rule would strengthen MSHA's existing regulatory framework. It would establish a uniform proposed PEL that provides all MNM and coal miners with the same exposure limits for respirable crystalline silica consistent with exposure limits that other U.S. workers currently receive in non-mining industries. It would update the existing respiratory protection standard to require mine operators to provide miners with NIOSH-approved respiratory equipment that has been fitted, selected, maintained, and used in accordance with recent consensus standards. The proposed rule would also include requirements for all MNM operators to provide medical surveillance in the form of a medical examination regime similar to what coal miners already receive. Cumulatively, the proposed provisions would lower miners' risk of developing chronic, irreversible, disabling, and potentially fatal health conditions, consistent with MSHA's mission and statutory mandate to prevent occupational diseases and protect U.S. miners from suffering material health impairments.

II. Request for Comments

MSHA requests comments on the proposed rule and all relevant issues, including the review and conclusions of the health effects discussion, preliminary risk analysis, feasibility analysis, preliminary regulatory impact analysis and regulatory alternatives, and preliminary regulatory flexibility analysis. While MSHA invites comments on any aspect of its proposed rule and related documents, the Agency particularly seeks information and data in response to questions posed in this section and any other aspect of this proposed rule. Instructions for submitting and viewing comments are provided under the **DATES** heading. MSHA will consider all timely comments and may change the proposed rule based on such comments.

MSHA requests that commenters organize their comments, to the extent possible, around the following numbered questions. The Agency is interested in receiving responses to the listed questions and any information or data supporting the responses.

Health Effects

1. In the standalone, background document entitled ''Health Effects of Respirable Crystalline Silica'' and as summarized in Section V. Health Effects Summary of this preamble, MSHA has made a preliminary determination that miners' exposure to respirable crystalline silica presents a risk of material health impairment due to the risk of developing silicosis, NMRD, lung cancer, and renal disease, based on its extensive review of the health effects literature. MSHA requests comments on this preliminary determination and its literature review, which draws heavily from the review conducted by OSHA for its 2016 rulemaking. Are there additional adverse health effects that should be included or more recent literature that offers a different perspective? MSHA requests that commenters submit information, data, or additional studies or their citations. Please be specific regarding the basis for any recommendation to include additional adverse health effects.

Preliminary Risk Analysis

2. In the standalone, background document entitled ''Preliminary Risk Analysis'' and as summarized in Section VI. Preliminary Risk Analysis Summary

of this preamble, MSHA relied on risk models that OSHA used in support of its 2016 respirable crystalline silica final rule. Does the context of the MSHA rule suggest that the model would benefit from changes? If so, please describe both the justification for those changes and the likely impact on the final risk estimates. Are there additional studies or sources of data that MSHA should consider? What is the rationale for recommending the use of these additional studies or data?

3. MSHA's risk analysis of lung cancer mortality uses the exposure-response model from Miller and MacCalman (2010) instead of Steenland et al. (2001a), on which OSHA's risk assessment of lung cancer mortality was based. MSHA uses Miller and MacCalman (2010) for several reasons. First, it covers coal mining-specific cohort large enough (with 45,000 miners) to provide adequate statistical power to detect low levels of risk, and it covers an extended follow-up period (1959–2006). Second, the study provided data on cumulative exposure of cohort members and adjusted for or addressed confounders such as smoking and exposure to other carcinogens. Finally, it developed quantitative assessments of exposure-response relationships using appropriate statistical models or otherwise provided sufficient information that permitted MSHA to do so. The Agency is requesting comment on MSHA's reliance on the Miller and MacCalman (2010) study in assessing lung cancer mortality. Please provide any other studies or information that MSHA should take into account in determining the risk of lung cancer mortality among miners.

Technological Feasibility of the Proposed Rule

4. As discussed in Section VIII. Technological Feasibility of this preamble, MSHA has preliminarily determined that it is technologically feasible for mine operators to conduct air sampling and analysis and to achieve the proposed PEL using commercially available samplers. MSHA has also determined that these technologically feasible samplers are widely available, and a number of commercial laboratories provide the service of analyzing dust containing respirable crystalline silica. In addition, MSHA has determined that technologically feasible engineering controls are readily available, can control crystalline silica-containing dust particles at the source, provide reliable and consistent protection to all miners who would otherwise be exposed to respirable dust, and can be monitored. MSHA has also determined that administrative controls, used to supplement engineering controls, can further reduce and maintain exposures at or below the proposed PEL. Moreover, MSHA has preliminarily determined the proposed respiratory protection practices for respirator use are technologically feasible for mine operators to implement. MSHA requests comments on these preliminary conclusions. What methods have you used that proved effective in reducing miners' exposure to respirable crystalline silica in mining operations? Please explain how those methods were effective in reducing miners' exposures. To what extent do existing controls that reduce exposure to other airborne hazards (*e.g.,* coal dust, diesel particulate matter) already reduce exposures to respirable crystalline silica below the proposed PEL? To what extent does the proposed rule including the PEL facilitate MSHA's workplace health and safety goals? Please provide supporting information, such as quantitative data if available.

5. MSHA has determined that the proposed medical surveillance requirements for MNM are technologically feasible. MSHA requests comments on this preliminary conclusion. Please provide supporting information, such as quantitative data if available.

Preliminary Regulatory Impact Analysis and Regulatory Alternatives

6. In the standalone background document entitled ''*Preliminary Regulatory Impact Analysis*'' and as summarized in Section IX. Summary of Preliminary Regulatory Impact Analysis and Regulatory Alternatives of this preamble, MSHA developed estimated costs of compliance with the proposed rule and estimated monetized benefits associated with averted cases of respirable crystalline silica-related diseases. MSHA requests comments on the methodologies, baseline, assumptions, and estimates presented in the Preliminary Regulatory Impact Analysis. Please provide any data or quantitative information that may be useful in evaluating the estimated costs and benefits associated with the proposed rule.

7. MSHA considered two regulatory alternatives in developing the proposed rule discussed in Section IX. Summary of Preliminary Regulatory Impact Analysis and Regulatory Alternatives. In the regulatory alternatives presented, MSHA discussed alternatives to the proposed PEL, action level, sampling requirements, and semi-annual evaluations. MSHA requests comments on these and other regulatory alternatives and information on any other alternatives that the Agency should consider, including different average working-life spans and different average shift lengths. Please provide supporting information about how these alternatives could affect miners' protection from respirable crystalline silica exposure and affect mine operators' costs.

Initial Regulatory Flexibility Analysis

8. As summarized in Section X. Initial Regulatory Flexibility Analysis of this preamble, MSHA examined the impact of the proposed rule on small mines in accordance with the Regulatory Flexibility Act. MSHA estimated that small-entity controllers would be expected to incur, on average, additional regulatory costs equaling approximately 0.122 percent of their revenues (or $1,220 for every $1 million in revenues). MSHA is interested in how the proposed rule would affect small mines, including their ability to comply with the proposed requirements. Please provide information and data that supports your response. If you operate a small mine, please provide any projected impacts of the proposal on your mine, including the specific rationale supporting your projections.

Scope and Effective Date

9. MSHA is proposing a unified regulatory and enforcement framework for controlling miners' exposures to respirable crystalline silica for the mining industry. MSHA requests comments on this unified regulatory and enforcement framework. MSHA requests the views and recommendations of stakeholders regarding the scope of proposed part 60, which would include all surface and underground MNM and coal mines. MSHA requests comments on whether separate standards should be developed for the MNM mining industry and the coal mining industry. Please provide supporting information.

10. MSHA is proposing that the final rule would be effective 120 days after its publication in the **Federal Register**. This period is intended to provide mine operators time to evaluate existing engineering and administrative controls, update their respiratory protection programs, and prepare to comply with other provisions of the rule including recordkeeping requirements. Please provide your views on the proposed effective date. In your response, please include the rationale for your position.

Definitions

11. MSHA requests comments on the proposed action level. Stakeholders should provide specific information and data in support of or against a proposed action level. Stakeholders should include a discussion of how the use of a proposed action level would impact their mines, including the cost of monitoring respirable crystalline silica above the proposed action level, and other relevant information. Please provide supporting information.

12. MSHA requests comments on the proposed definition for ''objective data.'' Is it appropriate to allow mine operators to use objective data instead of a second baseline sample? Please provide supporting information.

Proposed Permissible Exposure Limit

13. MSHA is proposing a PEL for respirable crystalline silica of 50 μg/m³ for a full-shift exposure, calculated as an 8-hour TWA for MNM and coal miners. MSHA has made a preliminary determination that the proposed PEL would reduce miners' risk of suffering material impairment of health or functional capacity over their working lives. MSHA seeks the views and recommendations of stakeholders on the proposed PEL. MSHA solicits comments on the approach of having a standalone PEL and whether to eliminate the reduced standard for total respirable dust when quartz is present at coal mines. Please provide evidence to support your response.

14. MSHA is proposing a PEL of 50 ug/m³ and an action level of 25 μg/m³ for respirable crystalline silica exposure. Which proposed requirements should be triggered by exposure at, above, or below the proposed action level? Please provide supporting information.

Methods of Compliance

15. MSHA requests comments on the proposed prohibition against rotation of miners as an administrative control. Please include a discussion of the potential effectiveness of this non-exposure approach and its impact on miners at specific mines. Please provide supporting information.

16. MSHA requests comments on the proposed requirement that mine operators must install, use, and maintain feasible engineering and administrative controls to keep miners' exposures to respirable crystalline silica below the proposed PEL. Please provide supporting information.

Proposed Exposure Monitoring

17. MSHA requests comments and information from stakeholders concerning the proposed approaches to monitoring exposures, and other approaches to accurately monitor miner exposure to respirable crystalline silica in MNM and coal mines. Please provide supporting information and data.

18. MSHA proposes to require mine operators to collect a respirable crystalline silica sample for a miner's regular full shift during typical mining activities. Many potential sources of respirable crystalline silica are present only when the mine is operating under typical conditions. MSHA requests comments on this requirement and whether to specify environmental conditions under which samples should be taken to ensure that samples accurately reflect actual levels of respirable crystalline silica exposure. In MSHA's experience, for example, environmental conditions such as precipitation (*e.g.,* rain or snow) or wind could affect the actual levels of respirable crystalline silica exposure at miners' normal or regular workplaces throughout their typical workday. Please provide supporting information and data.

19. MSHA recognizes that some mining facilities operate seasonally or intermittently and that cumulative exposures for miners at these facilities may be lower than that of miners working at year-round operations. MSHA requests comments on the exposure monitoring approach under proposed § 60.12, including the frequency of exposure monitoring necessary to safeguard the health of miners at seasonal or intermittent operations. Please provide supporting information and data.

20. MSHA is proposing that each mine operator perform baseline sampling within 180 days after the rule becomes effective to assess the respirable crystalline silica exposure of each miner who is or may reasonably be expected to be exposed to respirable crystalline silica. MSHA requests comments on this proposed baseline sampling requirement. MSHA also requests comment on the ability of service providers used by mines such as industrial hygiene suppliers and consultants, and accredited laboratories that conduct respirable crystalline silica analysis, to meet the demand created by the baseline sampling requirements within the proposed timeline. Please include alternative approaches that might be equally protective of miners that should be implemented for assessing a miner's initial exposure to respirable crystalline silica.

21. MSHA is proposing a requirement that mine operators qualitatively evaluate every 6 months any changes in production, processes, engineering controls, personnel, administrative controls, or other factors, beginning 18 months after the effective date. MSHA requests comments on the timing of the proposed semi-annual evaluation requirements, and in particular, whether miners would possibly be exposed unnecessarily to respirable crystalline silica levels above the PEL due to the gap between the effective date and the proposed requirements. Please provide supporting information.

22. MSHA has determined that most occupations related to extraction and processing would meet the ''reasonably be expected'' threshold for baseline sampling. MSHA recognizes that some miners may work in areas or perform tasks where exposure is not reasonably expected, if at all. MSHA solicits comments on the assumption that most miners are exposed to at least some level of respirable crystalline silica, and on the proposed requirement that these miners should be subject to baseline sampling. Please provide supporting information.

23. MSHA is proposing that mine operators would not be required to conduct periodic sampling if the baseline sampling result, together with another sampling result or objective data, as defined in proposed § 60.2, confirms miners' exposures are below the proposed action level. MSHA seeks comments on this proposal. Please provide supporting information and data.

24. MSHA is proposing that mine operators conduct periodic sampling within 3 months where the most recent sampling indicates miner exposures are at or above the proposed action level but at or below the proposed PEL and continue to sample within 3 months of the previous sampling until two consecutive samplings indicate that miner exposures are below the action level. MSHA solicits comments on the proposed frequency for periodic sampling, including whether the consecutive samples should be at least 7 days apart. Please provide supporting information and data.

25. MSHA is proposing that mine operators may discontinue periodic sampling when two consecutive samples indicate that miner exposures are below the proposed action level. MSHA requests comments on this proposal. Please provide supporting information and data.

26. MSHA is proposing that mine operators conduct semi-annual evaluations to evaluate whether any changes in production, processes, engineering controls, personnel, administrative controls, or other factors may reasonably be expected to result in

new or increased respirable crystalline silica exposures. Please provide comments on this proposal, as well as alternative approaches that would be appropriate for evaluating any potential new or increased respirable crystalline silica exposures. Please provide supporting information and data.

27. MSHA is proposing that miners' exposures are measured using personal breathing-zone air samples for MNM operations and occupational environmental samples collected in accordance with §§ 70.201(c), 71.201(b), or 90.201(b) for coal operations. MSHA requests comments on this proposal. Please provide supporting information and data.

28. MSHA is proposing the use of representative sampling. Where several miners perform the same task on the same shift and in the same work area, the mine operator may sample a representative fraction of miners to meet the proposed exposure monitoring requirements. MSHA seeks comments on the use of representative sampling. Please provide supporting information and data.

29. MSHA is proposing that mine operators use laboratories accredited to ISO/IEC 17025 ''General requirements for the competence of testing and calibration laboratories,'' where the accreditation has been issued by a body that is compliant with ISO/IEC 17011 ''Conformity assessment—requirements for accreditation bodies accrediting conformity assessment bodies.'' MSHA solicits comments on this proposal. Are there additional requirements that should be incorporated into this proposal to ensure accurate sample analysis methods? Please provide supporting information and data.

30. MSHA seeks comments on the proposal that mine operators ensure that laboratories evaluate all respirable crystalline silica samples using respirable crystalline silica analytical methods specified by MSHA, NIOSH, or OSHA. Are there additional requirements that should be incorporated into this proposal to ensure accurate sample analysis? Please provide supporting information and data.

31. MSHA seeks comments and information on mine operator and stakeholder experience using NIOSH's rapid field-based quartz monitoring (RQM) monitors for determining miners' exposures to respirable crystalline silica. Please provide any information and data.

Proposed Medical Surveillance for Metal and Nonmetal Miners

32. MSHA is proposing to require medical surveillance for MNM miners. Medical surveillance is already required for coal miners under 30 CFR 72.100 and has played an important role in tracking the burden of pneumoconiosis in coal miners but is not currently required for MNM miners. MSHA's proposal would require MNM mine operators to provide each miner new to the mining industry with an initial medical examination and a follow-up examination no later than 3 years after the initial examination, at no cost to the miner. It would also require MNM mine operators to provide examinations for all miners at least every 5 years, which would be voluntary for miners. Is there an alternative strategy or schedule, such as voluntary initial or follow-up examinations, tying the medical surveillance requirement to miners reasonably expected to be exposed to any level of silica or to the action level that would be more appropriate for new MNM miners? Should the rule make each 5-year examination mandatory? Should the 5-year examination be mandatory for coal mine operators as well? Please provide data or cite references to support your position.

33. MSHA's proposed medical surveillance requirements for MNM miners do not include some requirements that are in MSHA's existing medical surveillance requirements for coal mine operators in 30 CFR 72.100. For example, § 72.100 requires coal mine operators to use NIOSH-approved facilities for medical examinations. Should MNM operators be required to use NIOSH-approved facilities for medical examinations? Coal mine operators also are required to submit for approval to NIOSH a plan for providing miners with the examinations specified. This is because NIOSH administers medical surveillance for coal miners with requirements for coal operators, but not MNM operators, in NIOSH standards (42 CFR part 37). Should the plan requirements be extended to MNM operators? However, the proposed requirements also include some requirements for MNM operators that are not included for coal operators. For example, the proposed provisions require operators of MNM mines to provide MNM miners with periodic medical examinations performed by physicians or other licensed health care professionals (PLHCP) or specialists including a history and physical examination focused on the respiratory system, a chest X-ray, and a spirometry test. The proposed rule also requires a written medical opinion be provided by the PLHCP or specialist to the mine operator regarding the miner's ability to wear a respirator. MSHA seeks comment on the differences between the medical surveillance requirements for MNM operators in this proposed rule and the existing medical surveillance requirements for coal mine operators in § 72.100. MSHA also seeks comment on how best to collect health surveillance data from PLHCPs and specialists to track MNM miners' health, for example how to know when pneumoconiosis cases occur. MSHA seeks comments on alternative approaches to scheduling periodic medical surveillance. MSHA proposes to require operators to keep medical surveillance information for the duration of a miner's employment plus 6 months. The Agency seeks comments on this proposed requirement and on any alternative recordkeeping schedules that would be appropriate. Please provide supporting information.

34. MSHA's proposed medical surveillance requirements for MNM miners would require operators of MNM mines to provide miners with periodic medical examinations performed by PLHCP or specialists, including a history and physical examination focused on the respiratory system, a chest X-ray, and a spirometry test. MSHA seeks comment on whether use of any new diagnostic technology (*e.g.,* high-resolution computed tomography) for the purposes of medical surveillance should be used.

35. MSHA's proposed medical surveillance requirements would require that the MNM mine operator provide a mandatory follow-up examination to the miner no later than 3 years after the miner's initial medical examination. If a miner's 3-year follow-up examination shows evidence of a respirable crystalline silica-related disease or decreased lung function, the operator would be required to provide the miner with another mandatory follow-up examination with a specialist within 2 years. For examinations that show evidence of disease or decreased lung function, MSHA seeks comment on how, and to whom, test results should be communicated.

36. MSHA requests comments as to whether the proposed provisions should include a medical removal option for MNM miners who have developed evidence of silica-related disease that is equivalent to the transfer rights and exposure monitoring provided to coal miners in 30 CFR part 90 (part 90). Under part 90, any coal miner who has evidence of the development of pneumoconiosis based on a chest X-ray or other medical examinations has the

option to work in an area of the mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard. Under part 90, coal miners are entitled to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection. MSHA seeks comment on whether this medical removal option should be provided to MNM miners. What would be the economic impact of providing MNM miners a medical removal option? Please provide supporting information and data.

Proposed Respiratory Protection Standard

37. MSHA requests comments concerning the temporary, non-routine use of respirators and whether there are other instances or occupations in which the Agency should allow the use of respirators as a supplemental control. Please discuss any impacts on particular mines and mining conditions and the cost of air-purifying respirators, if applicable. MSHA also solicits comments on the proposed requirement that affected miners wear respiratory protection to maintain protection during temporary and non-routine use of respirators. Please provide supporting information.

38. MSHA is proposing to incorporate by reference ASTM F3387–19, published in 2019. Whenever respiratory protective equipment is needed, mine operators would be required to follow practices for program administration, standard operating procedures, medical evaluations, respirator selection, training, fit testing, and maintenance, inspection, and storage in accordance with the requirements of ASTM F3387–19. Beyond these elements, MSHA is proposing to provide operators the flexibility to select the elements in ASTM F3387–19 that are applicable to their practices of respirator use at their mines. Should mine operators have the flexibility to choose the ASTM F3387–19 elements that are appropriate for their mine-specific hazards because the need for respirators may vary due to the variability of mining processes, activities, airborne hazards, and commodities mined? What, specifically, do you think should factor into the determination of what is applicable? MSHA seeks comments on its proposed approach and the impact it would have on mine operators and on miners' life and health.

39. ASTM F3387–19 identifies a variety of respiratory protection practice elements. MSHA proposes to require certain minimally acceptable program elements: program administration; standard operating procedures; medical evaluations; respirator selection; training; fit testing; and maintenance, inspection, and storage. Please comment on whether these are the appropriate elements to require, or if there are any other elements of ASTM F3387–19 that should be minimally included in any respiratory protection program. MSHA also welcomes comments on whether it would be appropriate to require the standard in its entirety. Please identify those elements that would ensure that approved respirators are selected, fitted, used, cleaned, and maintained so that the life and health of miners are safeguarded. MSHA also seeks data and information on the impact these changes would have on mine operators, especially smaller operators. What would be the economic impact if all or parts of ASTM F3387–19 were required respirator program elements? Please be specific with your response and provide details on respirator use at your mine to include information and data on mining processes and environmental conditions; level of exposures to airborne contaminants; frequency and duration of exposures; type and amount of work or physical labor, including frequency and duration; and medical evaluation on respirator use, if applicable.

Recordkeeping Requirements

40. MSHA is proposing to require recordkeeping for records of evaluations, records of samplings, records of corrective actions, and written determination records received from a PLHCP. The proposed rule's recordkeeping requirements are discussed in the Section-by-Section Analysis section of this Preamble. MSHA seeks comment on the utility of these recordkeeping requirements as well as the costs of making and maintaining these records. Please provide supporting information.

Training Requirements

41. MSHA requests the views and recommendations of stakeholders regarding whether training requirements for miners should be included in proposed part 60. Please provide supporting information and data.

Conforming Changes

42. MSHA requests comments on the proposed conforming changes to remove the reduced coal dust standard from 30 CFR and the potential impact on coal mines and miners and on whether to retain the reduced standard for part 90 miners. Please provide supporting information.

43. MSHA is not proposing to adopt a similar approach as the OSHA Table 1 for the construction industry, where MSHA would prescribe specific exposure control methods for task-based work practices when working with materials containing respirable crystalline silica. See 29 CFR 1926.1153(c)(1). MSHA requests comments on specific tasks and exposure control methods appropriate for a Table 1-approach for the mining industry that also would adequately protect miners from risk of exposure to respirable crystalline silica. Please provide specific rationale and supporting information, including data on how such an approach would be implemented.

III. Background

The purpose of this proposed rule is to reduce miners' risk of developing occupational lung disease and other diseases caused by exposure to respirable crystalline silica and to better protect all miners from occupational exposure to airborne hazards. In promulgating mandatory standards dealing with toxic materials or harmful physical agents, MSHA is required to ''set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity . . .'' 30 U.S.C. 811(a)(6)(A).

A. Statutory Authority

The statutory authority for this proposal is provided by the Mine Act under sections 101(a), 103(h), and 508. 30 U.S.C. 811(a), 813(h), and 957. MSHA implements the provisions of the Mine Act to prevent death, illness, and injury from mining and promote safe and healthful workplaces for miners. The Mine Act requires the Secretary of Labor (Secretary) to develop and promulgate improved mandatory health or safety standards to prevent hazardous and unhealthy conditions and protect the health and safety of the nation's miners. 30 U.S.C. 811(a).

Congress passed the Mine Act to address these dangers, finding ''an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines.'' 30 U.S.C. 801(c). Congress concluded that ''the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other

mines is a serious impediment to the future growth of the coal or other mining industry and cannot be tolerated.'' 30 U.S.C. 801(d). Accordingly, ''the Mine Act evinces a clear bias in favor of miner health and safety.'' *Nat'l Mining Ass'n* v. *Sec'y, U.S. Dep't of Lab.,* 812 F.3d 843, 866 (11th Cir. 2016).

Section 101(a) of the Mine Act gives the Secretary the authority to develop, promulgate, and revise, as appropriate, mandatory health standards to address toxic materials or harmful physical agents. Under Section 101(a), standards must protect lives and prevent injuries in mines and be ''improved'' over any standard that it replaces or revises. Moreover, ''the Mine Act does not contain the 'significant risk' threshold requirement . . . from the OSH Act.'' *Nat'l Mining Ass'n* v. *United Steel Workers,* 985 F.3d 1309, 1319 (11th Cir. 2021); see also *Nat'l Min. Ass'n* v. *Mine Safety & Health Admin.,* 116 F.3d 520, 527–28 (D.C. Cir. 1997) (contrasting the OSH Act at 29 U.S.C. 652 with the Mine Act at 30 U.S.C. 811(a) and noting that ''[a]rguably, *this* language does not mandate the same risk-finding requirement as OSHA'' and holding that ''[a]t most, ... [MSHA] was required to identify a significant risk associated with having no oxygen standard at all'' (emphasis in original)).

The Secretary must set standards to assure, based on the best available evidence, that no miners will suffer material impairment of health or functional capacity from exposure to toxic materials or harmful physical agents over their working lives. 30 U.S.C. 811(a)(6)(A). In developing standards that attain the ''highest degree of health and safety protection for the miner,'' the Mine Act requires that the Secretary consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under the Mine Act and other health and safety laws. *Id.* However, MSHA's ''duty to use the best evidence and to consider feasibility . . . cannot be wielded as counterweight to MSHA's overarching role to protect the life and health of workers in the mining industry.'' *Nat'l Mining Ass'n,* 812 F.3d at 866. Instead, ''when MSHA itself weighs the evidence before it, it does so in light of its congressional mandate.'' *Id.*

Section 103(h) of the Mine Act gives the Secretary the authority to promulgate standards involving recordkeeping and reporting. 30 U.S.C. 813(h). In general, section 103(h) requires that every mine operator establish and maintain records, make reports, and provide this information, if required by the Secretary. *Id.* Also, section 508 of the Mine Act gives the Secretary the authority to issue regulations to carry out any provision of the Mine Act. 30 U.S.C. 957.

MSHA's proposal to lower the exposure limits for respirable crystalline silica and adopt an integrated monitoring approach across all mining sectors and to update the existing respiratory protection requirements would fulfill Congress' direction by preventing miners from suffering material impairment of health or functional capacity caused by exposure to respirable crystalline silica and other airborne contaminants.

B. Respirable Crystalline Silica Hazard and Mining

Silica is a common component of rock composed of silicon and oxygen (chemical formula SiO_2), existing in amorphous and crystalline states. Silica in the crystalline state is the focus of this rulemaking. Respirable crystalline silica consists of small particles of crystalline silica that can be inhaled and reach the alveolar region of the lungs, where they can accumulate and cause disease. In crystalline silica, the silicon and oxygen atoms are arranged in a three-dimensional repeating pattern. The crystallization pattern varies depending on the circumstances of crystallization, resulting in a polymorphic state—several different structures with the same chemical composition. The most common form of crystalline silica found in nature is quartz, but cristobalite and tridymite may also be found in limited circumstances. Quartz accounts for the overwhelming majority of naturally occurring crystalline silica. In fact, quartz accounts for almost 12 percent of the earth's crust by volume. All soils contain at least trace amounts of quartz and it is present in varying amounts in almost every type of mineral. Quartz is also abundant in most rock types, including granites, sandstones, and shale. Moreover, quartz is commonly found in limestone formations, although limestone itself does not contain quartz. Because of its abundance, crystalline silica in the form of quartz is present in nearly all mining operations.

Cristobalite and tridymite are formed at very high temperatures and are associated with volcanic activity. Naturally occurring cristobalite and tridymite are rare, but they can be found in volcanic ash and in a relatively small number of rock types limited to specific geographic regions. Although rare, exposure to cristobalite occurs when volcanic deposits are mined. In addition, when other materials are mined, miners can potentially be exposed to cristobalite during certain processing steps (*e.g.,* heating silica-containing materials) and contact with refractory materials (*e.g.,* replacing fire bricks in mine processing facility furnaces). Tridymite is rarely found in nature and miner exposure to tridymite is much more infrequent.

Most mining activities generate silica dust because silica is often contained in the ore being mined or in the overburden (*i.e.,* the soil and surface material surrounding the commodity being mined). Such activities include, but are not limited to, cutting, sanding, drilling, crushing, grinding, sawing, scraping, jackhammering, excavating, and hauling materials that contain silica. These activities can generate respirable crystalline silica and may therefore lead to miner exposure.

Inhaled small particles of silica dust can be deposited throughout the lungs. A large number of crystalline silica particles can reach and remain in the deep lung (*i.e.,* alveolar region), although some small particles are cleared from the lungs. Because respirable crystalline silica particles are not water-soluble and do not undergo metabolism into less toxic compounds, those particles remaining in the lungs for prolonged periods result in a variety of cellular responses that may lead to pulmonary disease. The respirable crystalline silica particles that are cleared from the lungs can be distributed to lymph nodes, blood, liver, spleen, and kidneys, potentially accumulating in those other organ systems and causing renal disease and other adverse health effects.

In the U.S. in 2021, a total of 12,162 mines produced a variety of commodities. As shown in Table III–1, of those 12,162 total mines, 11,231 mines were MNM mines and 931 mines were coal mines. MNM mines can be broadly divided into five commodity groups: metal, nonmetal, stone, crushed limestone, and sand and gravel. These broad categories encompass approximately 98 different commodities.[1] Table III–1 shows that a majority of MNM mines produce sand and gravel, while the largest number of MNM miners work at metal mines (not

[1] Commodities such as sand, gravel, silica, and/or stone for example are used in road building, concrete construction, manufacture of glass and ceramics, molds for metal castings in foundries, abrasive blasting operations, plastics, rubber, paint, soaps, scouring cleansers, filters, hydraulic fracturing, and various architectural applications. Some commodities naturally contain high levels of crystalline silica, such as high-quartz industrial and construction sands and granite dimension stone and gravel (both produced for the construction industry).

including MNM contract workers (*i.e.,* independent contractors and employees of independent contractors who are engaged in mining operations)).

Table III-1: Number of Mines and Miners by Commodity in 2021

	Number of Mines	Number of Miners
MNM Mines		
Metal	264	35,864
Nonmetal	549	15,736
Stone	2,320	33,031
Crushed Limestone	1,866	23,691
Sand and Gravel	6,232	33,296
MNM Contract Workers	–	57,426*
MNM Subtotal	11,231	199,044
Coal Mines		
Underground	211	21,108
Surface	720	17,571
Coal Contract Workers	–	16,151*
Coal Subtotal	931	54,830
Grand Total	**12,162**	**253,874**

* The number of MNM and coal contract workers is presented in aggregate because commodity data for contract workers is unavailable.
Source: MSHA MSIS Data (reported on MSHA Form 7000-2).

The 931 coal mines—underground and surface—produce bituminous, subbituminous, anthracite, and lignite coal. Coal mining activities generate mixed coal mine dust that contains respirable silicates such as kaolinite, oxides such as quartz, as well as other components (IARC, 1997). These activities include the general mining activities previously mentioned (*e.g.,* cutting, sanding, drilling, crushing, and hauling materials), as well as roof bolter operations, continuous mining machine operations, longwall mining, and other activities. Table III–1 shows that there are more surface coal mines than underground coal mines, but more miners are working in underground coal mines than surface coal mines (not including coal contract workers).

IV. Existing Standards and Implementation

MSHA has maintained health standards to protect MNM and coal miners from excessive exposure to respirable crystalline silica for decades. MSHA's existing standards, established in the early 1970s, limit miners' exposures to respirable crystalline silica. These standards require mine operators to monitor occupational exposures to respirable crystalline silica and to use engineering controls as the primary means of suppressing, diluting, or diverting dust generated by mining activities. They also require mine operators to provide respiratory protection in limited situations and on a temporary basis. The existing standards for MNM and coal mines differ in some respects, including exposure limits and monitoring. This section describes MSHA's existing standards for respirable crystalline silica and presents respirable crystalline silica sampling data to show how MNM and coal mine operators have complied with them in recent years.

A. Existing Standards—Metal and Nonmetal Mines

MSHA's existing standards for exposure to airborne contaminants, including respirable crystalline silica, in MNM mines are found in 30 CFR part 56, subpart D (Air Quality and Physical Agents), and 30 CFR part 57, subpart D (Air Quality, Radiation, Physical Agents, and Diesel Particulate Matter). These standards include PELs for airborne contaminants (§§ 56.5001 and 57.5001), exposure monitoring (§§ 56.5002 and 57.5002), and control of exposure to airborne contaminants (§§ 56.5005 and 57.5005).

Permissible Exposure Limits. The existing PELs for the three polymorphs of respirable crystalline silica are based on the *TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) for 1973,* incorporated by reference in 30 CFR 56.5001 and 57.5001 (ACGIH, 1974). The 1973 TLV® establishes limits for respirable dust containing 1 percent quartz or greater and is calculated in milligrams per cubic meter of air (mg/m^3) for each respirable dust sample. The TLV® for quartz is calculated by dividing the percent of respirable quartz plus 2, into the number 10. The TLV® for cristobalite and the TLV® for tridymite, respectively, are calculated by multiplying the same mass formula by one-half using the percentages of either cristobalite or tridymite found in the sample. Thus, the resulting TLVs® for respirable dust containing 1 percent respirable crystalline silica or greater are designed to limit exposures to less than 0.1 mg/m^3 or 100 μg/m^3 for quartz, to less than 0.05 mg/m^3 or 50 μg/m^3 for cristobalite, and to less than 0.05 mg/m^3 or 50 μg/m^3 for tridymite. Throughout the remainder of this preamble, the concentrations of respirable dust and respirable crystalline silica are expressed in μg/m^3.

Exposure Monitoring. Under 30 CFR 56.5002 and 57.5002, MNM mine operators must conduct respirable dust ''surveys . . . as frequently as necessary to determine the adequacy of control measures.'' Mine operators can satisfy the survey requirement through various activities, such as respirable dust sampling and analysis, walk-through inspections, wipe sampling, examining dust control system and ventilation system maintenance, and reviewing information obtained from injury, illness, and accident reports.

MSHA encourages MNM mine operators to conduct sampling for airborne contaminants to ensure a healthy and safe work environment for miners because sampling provides more accurate information about miners' exposures to harmful airborne contaminants and the effectiveness of existing controls in reducing such exposures. When a mine operator's respirable dust survey indicates that miners have been overexposed to any airborne contaminant, including respirable crystalline silica, the operator is expected to adjust its control measures (*e.g.,* exhaust ventilation) to reduce or eliminate the identified hazard. After doing so, the mine operator is expected to conduct additional surveys to determine whether these efforts were successful. Re-surveying should be done as frequently as necessary to ensure that the implemented control measures remain adequate. MSHA's determination of whether a mine operator has surveyed frequently enough is based on several factors, including whether sampling results comply with the permissible exposure limit, whether there have been changes in the mining operation or process, and whether controls such as local exhaust ventilation systems need routine or special maintenance.

Exposure Controls. MSHA's existing standards for controlling a miner's exposure to harmful airborne contaminants (§§ 56.5005 and 57.5005) require, if feasible, prevention of contamination, removal by exhaust ventilation, or dilution with uncontaminated air. The use of respiratory protective equipment is also allowed under specified circumstances such as when engineering controls are being developed or are not feasible. When respiratory protective equipment is used, the operator must have a respiratory protection program consistent with the requirements of *American National Standards Practices for Respiratory Protection ANSI Z88.2–1969.*

Consistent with widely accepted industrial hygiene principles and NIOSH's recommendations, MSHA requires the use of engineering controls, supplemented by administrative controls, in its enforcement for the control of occupational exposure to respirable crystalline silica and other airborne contaminants (NIOSH, 1974). Engineering controls designed to remove or reduce the hazard at the source are the most effective. Examples of engineering controls include the installation of proper ventilation systems, use of water sprays or wetting agents to suppress airborne contaminants, installation of machine-mounted dust collectors to capture respirable crystalline silica and other contaminants, and the installation of control booths or environmental cabs to enclose equipment operators.

Although considered a supplementary or secondary measure to engineering controls, mine operators may use administrative controls to further reduce miners' exposures to respirable crystalline silica and other airborne contaminants. In applying administrative controls, mine operators can direct miners to perform certain activities in specific manners. For instance, as an administrative control, operators can specify adequate housekeeping procedures for miners to clean spills or handle contaminated clothing which could reduce occupational exposure to airborne contaminants, including respirable crystalline silica.

In addition, respiratory protective equipment can be used in controlling miners' exposures to airborne contaminants, including respirable crystalline silica, on a temporary basis or under non-routine, limited conditions. The use of respiratory protection is, however, considered to be a supplement, not an alternative to any engineering or administrative control, in reducing or eliminating a miner's exposure to airborne contaminants including respirable crystalline silica.

Under the existing standards in §§ 56.5005 and 57.5005, in circumstances where engineering controls are not yet developed or where it is necessary for miners to enter hazardous atmospheres to establish controls or to perform non-routine maintenance or investigation, a miner using appropriate respiratory protection ''may work for reasonable periods of time'' in concentrations of airborne contaminants which exceed exposure limits. Respirators approved by NIOSH and suitable for their intended purpose must be provided by mine operators at no cost to the miner and must be used by miners to protect themselves against the health and safety hazards of airborne contaminants. Whenever respiratory protection is used, MNM mine operators are required to have a respirator program consistent with the requirements specified in ANSI Z88.2–1969.

B. Existing Standards—Coal Mines

Under existing standards, there is no separate standard for respirable crystalline silica for coal mines. MSHA's existing standards for exposure to respirable quartz in coal mines, found in 30 CFR 70.101 and 71.101, establish a respirable dust standard when quartz is present for underground and surface coal mines, respectively. Under 30 CFR part 90 (Mandatory Health Standards—Coal Miners Who Have Evidence of the Development of Pneumoconiosis), § 90.101 also sets the respirable dust standard when quartz is present for coal miners. Under these respirable dust standards, coal miners' exposures to respirable quartz are indirectly regulated through reductions in the overall respirable dust standard.

Under its existing respirable coal mine dust standards, MSHA defines quartz as crystalline silicon dioxide (SiO_2), which includes not only quartz but also two other polymorphs, cristobalite and tridymite.[2] Therefore, quartz and respirable crystalline silica are used interchangeably in the discussions of MSHA's existing standards for controlling exposures to respirable crystalline silica in coal mines.

Exposure Limits. The exposure limit for respirable crystalline silica during a coal miner's shift is 100 μg/m^3, reported as an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. This equivalent concentration of respirable crystalline silica must not be exceeded during the miner's entire shift, regardless of duration. When the equivalent concentration of respirable quartz exceeds 100 μg/m^3, under §§ 70.101, 71.101, and 90.101, MSHA imposes a reduced respirable dust standard designed to ensure that respirable quartz will not exceed 100 μg/m^3. The applicable dust standard, when the equivalent concentration of respirable crystalline silica exceeds 100 μg/m^3, is computed by dividing the percent of quartz into the number 10.

[2] Quartz is defined in 30 CFR 70.2, 71.2, and 90.2 as crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure. Crystalline silicon dioxide is most commonly found in nature as quartz but sometimes occurs as cristobalite or, rarely, as tridymite. Quartz accounts for the overwhelming majority of naturally occurring crystalline silica and is present in varying amounts in almost every type of mineral.

The result of this calculation becomes the exposure limit for respirable coal mine dust (RCMD), for the sections of the mine represented by the sample. Various sections within a mine may have different reduced RCMD exposure limits. Therefore, when a respirable dust sample collected by MSHA indicates that the average concentration of respirable quartz dust exceeds the exposure limit, the mine operator is required to comply with the applicable dust standard. By reducing the amount of respirable dust to which miners are exposed during their shifts, the miners' exposures to respirable crystalline silica are reduced to a level at or below the exposure limit of 100 μg/m³.

Exposure Monitoring. Under §§ 70.208, 70.209, 71.206, and 90.207, coal mine operators are required to sample for respirable dust on a quarterly basis for specified occupations and work areas. The occupations and work areas specified in the existing coal standards are the occupations and work areas at a coal mine that are expected to have the highest concentrations of respirable dust—typically in locations where respirable dust is generated. In addition, respirable dust sampling must be representative of respirable dust exposures during a normal production shift. Also, sampling must occur while miners are performing routine, day-to-day activities. Part 90 miners must be sampled for the air they breathe while performing their normal work duties, from the start of their work day to the end of their work day, in their normal work locations.[3]

Exposure Controls. Under §§ 70.208, 70.209, 71.206, and 90.207, coal mine operators are required to use engineering or environmental controls as the primary means of complying with the respirable dust standards. Similar to the MNM standards, engineering and environmental controls include the use of dust collectors, water sprays, and ventilation controls. For many underground coal mines, providing adequate ventilation is the primary engineering control for respirable dust, ensuring that dust concentrations are continuously diluted with fresh air and exhausted away from miners.

When a respirable dust sample exceeds the exposure limit of 100 μg/m³ for respirable quartz, the operator must reduce the average concentration of RCMD to a level designed to maintain the quartz level at or below 100 μg/m³. If operators exceed the reduced RCMD standard, they are required to take corrective action to reduce exposure and comply with the reduced standard. Corrective actions that lower respirable coal mine dust, thus lowering respirable quartz exposures, are selected after evaluating the cause or causes of the overexposure. Corrective actions can include increasing air flow, improving ventilation controls, repairing and maintaining existing dust suppression controls, adding water sprays or other controls, cleaning dust filters or collectors more frequently, or repositioning the miner away from the dust source.

When taking corrective actions to reduce the exposure to respirable dust, coal mine operators must make approved respiratory equipment available to miners under §§ 70.208 and 71.206. Whenever respiratory protection is used, § 72.700 requires coal mine operators to comply with requirements specified in ANSI Z88.2–1969.

C. MSHA Inspection and Respirable Dust Sampling

MSHA collects respirable dust samples at mines and analyzes them for respirable crystalline silica to determine whether the respirable crystalline silica exposure limits are met and whether exposure controls are adequate. This section describes the respirable dust samples collected at MNM and coal mines in recent years and presents the results of the sample data analyses.

1. Respirable Dust Sample Collection

This subsection offers a brief description of how MSHA samples for respirable crystalline silica under the existing standards. Upon their arrival at mines, MSHA inspectors determine which areas of the mine and which miners to select for respirable dust sampling. At MNM mines, the MSHA inspector often determines sampling locations based on sample results from previous inspections and on the inspector's onsite observations of work practices and work areas. At coal mines, the MSHA inspector conducts sampling among the occupations or from the work areas that are specified for operator sampling under 30 CFR parts 70, 71, and 90. Generally speaking, MSHA inspectors collect respirable dust samples from the common occupations during typical and normal activities at the mine and from the positions that are commonly known to have the highest concentration of respirable dust.

After identifying which miners and which areas at the mine will be sampled for respirable dust, MSHA inspectors place gravimetric samplers on the selected miners or at the selected locations. Gravimetric samplers consist of a portable air-sampling pump connected to a particle-size separator (*i.e.,* cyclone) and collection medium (*i.e.,* filter). MSHA inspectors use Dorr-Oliver 10-mm nylon cyclones operated at a 1.7 liters per minute (L/min) flow rate for MNM mine sampling and at a 2.0 L/min flow rate (reported as MRE-equivalent concentrations) for coal mine sampling.[4] For the entire duration of the work shift, the gravimetric sampler captures air from the breathing zone of each selected miner or occupation and from each selected work area.

MSHA inspectors use the full-shift sampling approach. When miners work longer than an 8-hour shift, which is common, those miners are sampled continuously throughout the extended work shifts. Full-shift sampling is used to minimize errors associated with fluctuations in airborne contaminant concentrations during the miners' work shifts and to avoid any speculation about the miners' exposures during unsampled periods of the work shift. Once sampling is completed, the inspectors send the cassettes containing the full-shift respirable dust samples to the MSHA Laboratory for analysis.

[3] A ''Part 90 miner'' is defined in 30 CFR 90.3 as a miner employed at a coal mine who shows evidence of having contracted pneumoconiosis based on a chest X-ray or based on other medical examinations, and who is afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard.

[4] This type of sampling equipment was developed to separate the airborne particles by size in a manner similar to the size-selective deposition and retention characteristics of the human respiratory system. It is important to note that size-selective sampling does not measure the deposition of respirable particles in the lung. Rather, it provides a measure of the particulate mass available for deposition to the deep lung during breathing (Raabe and Stuart, 1999).

2. Respirable Dust Sample Analysis

The MSHA Laboratory analyzes inspectors' respirable dust samples, following its standard operating procedures (SOPs) summarized below.[5] Any samples that are broken, torn, or visibly wet are voided and removed before analysis. Once weighing of the samples is completed, samples are again screened based on mass gain and examined for validity. All valid samples that meet the minimum mass gain criteria per the associated MSHA analytical method are then analyzed for respirable crystalline silica and for the compliance determination.[6]

The MSHA Laboratory uses two analytical methods to determine the concentration of quartz (and cristobalite and tridymite, if requested): X-ray diffraction (XRD) for respirable dust samples from MNM mines, and Fourier transform infrared spectroscopy (FTIR) for respirable coal mine dust samples.[7] The XRD method uses X-rays to distinguish and measure the structure, composition, and physical properties of a sample. The FTIR method relies on the absorption of infrared light to determine the composition of a sample. The percentage of silica in the MNM mine dust sample is calculated using the mass of quartz or cristobalite determined from the XRD analysis and the measured mass of respirable dust. The percentage of silica is used to calculate MSHA's PELs for quartz and cristobalite, in accordance with §§ 56.5001 and 57.5001. Similarly, in the respirable coal mine dust sample, the percentage of quartz is calculated using the quartz mass determined from the FTIR analysis and the sample's mass of dust. Current FTIR methods, however, cannot quantify quartz and cristobalite, and/or tridymite, in the same sample. For coal mines, the percentage of quartz is used to calculate the reduced dust standard when the quartz concentration exceeds 100 μg/m³ (MRE).

It is worth noting how MSHA calculates full-shift exposure to respirable crystalline silica (and other airborne contaminants). When a miner who works an 8-hour shift is sampled, the miner's 8-hour TWA exposure is calculated as follows:

$$\textbf{8-}\boldsymbol{hour\ TWA} = \frac{\boldsymbol{Total\ weight\ of\ contaminant\ (\mu g)\ collected\ over\ 8\ hours}}{\boldsymbol{Flow\ rate\ (LPM)\ x\ 480\ mins\ x\ 0.001\ \ m^3/L}}$$

However, for work shifts that last longer than 8 hours, a coal miner's full-shift exposure is calculated differently than an MNM miner's full-shift exposure. In accordance with § 70.2, the coal miner's extended full-shift exposure has, since 2014, been calculated in the following way:

$$\boldsymbol{(Coal)\ Extended\ full\text{-}shift\ TWA} = \frac{\boldsymbol{Total\ weight\ of\ contaminant\ (\mu g)\ collected\ over\ the\ full\ shift}}{\boldsymbol{Flow\ rate\ (LPM)\ x\ Entire\ duration\ of\ the\ full\ shift\ (mins)\ x\ 0.001\ \ m^3/L}}$$

For the MNM miner, MSHA calculates extended full-shift exposure according to the following formula:

$$\boldsymbol{(MNM)\ Shift\ Weighted\ Average} = \frac{\boldsymbol{Total\ weight\ of\ contaminant\ (\mu g)\ collected\ over\ the\ full\ shift}}{\boldsymbol{Flow\ rate\ (LPM)\ x\ 480\ mins\ x\ 0.001\ \ m^3/L}}$$

For respirable dust samples from MNM mines, 480 minutes is used in the denominator regardless of the actual sampling time. Contaminants collected over extended shifts (*e.g.,* 600–720 minutes) are calculated as if they had been collected over 480 minutes. MSHA has used this calculation approach (also known as ''shift-weighted average'') since the 1970s.

Under the shift-weighted average approach, exposures for work schedules greater than 8 hours are proportionately adjusted to allow direct comparison with the 8-hour PEL. The ACGIH TLVs® adopted by MSHA are based on exposure periods of no more than 8 hours per day and 40 hours per week, with 16 hours of recovery time between shifts.

D. Respirable Crystalline Silica Sampling Results—Metal and Nonmetal Mines

This section presents the results of respirable dust samples that were collected by MSHA inspectors at MNM mines from 2005 to 2019. From January 1, 2005, to December 31, 2019, a total of 104,354 valid samples were collected. Of this total, 57,769 samples that met the minimum mass gain criteria were analyzed for respirable crystalline silica.

[5] The MSHA Laboratory has fulfilled the requirements of the AIHA Laboratory Accreditation Programs (AIHA–LAP), LLC accreditation to the ISO/IEC 17025:2017 international standard for industrial hygiene.

[6] The minimum mass gain criteria used by the MSHA Laboratory for the different samples are:

- *MNM mine respirable dust samples:* greater than or equal to 0.100 mg;
- *Underground coal mine respirable dust samples:* greater than or equal to 0.100 mg; and
- *Surface coal mine respirable dust samples:* greater than or equal to 0.200 mg.

Exception: For six surface occupations that have been deemed ''high risk,'' the laboratory uses a minimum mass gain criterion of greater than or equal to 0.100 mg.

If cristobalite analysis is requested for MNM mine respirable dust samples, filters having a mass gain of 0.05 mg or more are analyzed. In the rare instance when tridymite analysis is requested, a qualitative analysis for the presence of the polymorph is conducted concurrently with the cristobalite analysis.

[7] Details on MSHA's analytical procedures for respirable crystalline silica analysis can be found in ''MSHA P–2: X-Ray Diffraction Determination of Quartz and Cristobalite in Respirable Metal/Nonmetal Mine Dust'' and ''MSHA P–7: Determination of Quartz in Respirable Coal Mine Dust by Fourier Transform Infrared Spectroscopy.''

Department of Labor, Mine Safety and Health Administration, Pittsburgh Safety and Health Technology Center, X-Ray Diffraction Determination of Quartz and Cristobalite in Respirable Metal/Nonmetal Mine Dust. *https://arlweb.msha.gov/Techsupp/pshtcweb/MSHA%20P2.pdf.* Department of Labor, Mine Safety and Health Administration, Pittsburgh Safety and Health Technology Center, MSHA P–7: Determination of Quartz in Respirable Coal Mine Dust By Fourier Transform Infrared Spectroscopy. *https://arlweb.msha.gov/Techsupp/pshtcweb/MSHA%20P7.pdf.*

The vast majority of the 46,585 valid samples that were excluded from the analysis in this rulemaking did not meet the mass gain criteria described earlier and therefore the lab did not determine their silica concentration. Further information on the valid respirable dust samples that are excluded from the analysis in this rulemaking can be found in Appendix A of the preamble.

The respirable crystalline silica concentration is calculated using the measured mass of each of the polymorphs and the air sampling volume. As discussed above, the existing PEL for quartz in MNM mines is approximately equivalent to 100 μg/m³ for a full-shift exposure, calculated as an 8-hour TWA, while the existing PELs for cristobalite and tridymite, respectively, are approximately equivalent to 50 μg/m³ for a full-shift exposure, calculated as an 8-hour TWA.[8]

1. Annual Results of MNM Respirable Crystalline Silica Samples

Table IV–1 below shows the variation between 2005 and 2019 in: (1) the numbers of MNM respirable dust samples analyzed for respirable crystalline silica; and (2) the number and percentage of samples that had concentrations of respirable crystalline silica greater than 100 μg/m³. Of the 57,769 MNM respirable dust samples analyzed for respirable crystalline silica over the 15-year period, about 6 percent (3,539 samples) had respirable crystalline silica concentrations exceeding the existing PEL of 100 μg/m³. The average annual rates of overexposure ranged from a maximum of approximately 10 percent in 2006 (the second year) to a minimum of approximately 4 percent in 2019 (the last year of the time series). Compared with the rates in 2005–2008, overexposure rates were substantially lower in 2009–2017, with a further drop in 2018–19.

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Table IV-1: MNM Respirable Dust Samples, 2005–2019

Year	Number of Samples	Number of Samples with Respirable Crystalline Silica Concentration Greater than 100 μg/m³	Percent of Samples with Respirable Crystalline Silica Concentration Greater than 100 μg/m³
2005	6,982	503	7.2%
2006	3,385	338	10.0%
2007	3,879	297	7.7%
2008	2,806	269	9.6%
2009	5,937	320	5.4%
2010	4,992	259	5.2%
2011	3,938	234	5.9%
2012	3,422	205	6.0%
2013	3,150	140	4.4%
2014	3,067	153	5.0%
2015	3,015	169	5.6%
2016	2,958	150	5.1%
2017	3,526	205	5.8%
2018	3,227	152	4.7%
2019	3,485	145	4.2%
Total	**57,769**	**3,539**	**6.1%**

Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812).

[8] If more than one polymorph is present the equation used to calculate the TLV® for respirable dust containing quartz is modified per Appendix C of the 1973 ACGIH TLV® Handbook, and the equation is modified as follows: 10/[(% quartz + 2) + 2 (% cristobalite + 2)].

2. Analysis of MNM Respirable Crystalline Silica Samples by Commodity

Because the MNM mining industry produces commodities that contain varying degrees of respirable crystalline silica, it is important to examine each commodity separately. MNM mines can be grouped by five commodities: metal, sand and gravel, stone, crushed limestone, and nonmetal (where nonmetal includes all other materials that are not metals, besides sand, gravel, stone, and limestone). This grouping is based on the mine operator-reported mining products and the North American Industry Classification System (NAICS) codes. (Appendix B of the preamble provides a list of the NAICS codes relevant for MNM mining and how each code is assigned to one of the five commodities.)

Table IV–2 shows the distribution of the respirable dust samples analyzed for respirable crystalline silica by mine commodity. The percentage of samples with respirable crystalline silica concentrations greater than the existing exposure limit of 100 μg/m³ varies across the different commodities. It is highest for the metal, sand and gravel, and stone commodities (at approximately 11, 7, and 7 percent, respectively), and lowest for the nonmetal and crushed limestone commodities (at approximately 4 and 3 percent, respectively).

Table IV-2: MNM Respirable Dust Samples by Commodity, 2005-2019

Commodity	Number of Samples	Number of Samples with Respirable Crystalline Silica Concentration Greater than 100 μg/m³	Percent of Samples with Respirable Crystalline Silica Concentration Greater than 100 μg/m³
Metal Mines	3,499	376	10.8%
Nonmetal Mines	5,165	232	4.5%
Stone Mines	15,415	1,134	7.4%
Crushed Limestone Mines	15,184	434	2.9%
Sand and Gravel Mines	18,506	1,363	7.4%
Total	**57,769**	**3,569**	**6.1%**

Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812).

3. Analysis of MNM Respirable Crystalline Silica Samples by Occupation

To examine how miners who perform different tasks differ in occupational exposure to respirable crystalline silica, MSHA grouped MNM mining jobs into 11 occupational categories. These categories include jobs that are similar in terms of tasks performed, equipment used, and engineering or administrative controls used to control miners' exposure. For example, backhoe operators, bulldozer operators, and tractor operators were grouped into ''operators of large powered haulage equipment,'' whereas belt crew, belt cleaners, and belt vulcanizers were grouped into ''conveyer operators.'' The 121 MNM job codes used by MSHA inspectors were grouped into the following occupational categories: [9]

(1) Drillers (*e.g.,* Diamond Drill Operator, Wagon Drill Operator, and Drill Helper),

(2) Stone Cutting Operators (*e.g.,* Jackhammer Operator, Cutting Machine Operator, and Cutting Machine Helper),

(3) Kiln, Mill, and Concentrator Workers (*e.g.,* Ball Mill Operator, Leaching Operator, and Pelletizer Operator),

(4) Crushing Equipment and Plant Operators (*e.g.,* Crusher Operator/Worker, Scalper Screen Operator, and Dry Screen Plant Operator),

(5) Packaging Equipment Operators (*e.g.,* Bagging Operator and Packaging Operations Worker),

(6) Conveyor Operators (*e.g.,* Belt Cleaner, Belt Crew, and Belt Vulcanizer),

(7) Truck Loading Station Tenders (*e.g.,* Dump Operator and Truck Loader),

(8) Operators of Large Powered Haulage Equipment (*e.g.,* Tractor Operators, Bulldozer Operator, and Backhoe Operators),

(9) Operators of Small Powered Haulage Equipment (*e.g.,* Bobcat Operator, Scoop-Tram Operator, and Forklift Operator),

(10) Mobile Workers (*e.g.,* Laborers, Electricians, Mechanics, and Supervisors), and

(11) Miners in Other Occupations (*e.g.,* Welder, Dragline Operator, Ventilation Crew and Dredge/Barge Operator).

Table IV–3 shows sample numbers and overexposure rates by MNM occupation. Operators of large powered haulage equipment accounted for the largest number of samples analyzed for silica (17,016 samples), whereas conveyor operators accounted for the fewest (215 samples). Table IV–3 also shows the number and percentage of the samples exceeding the existing respirable crystalline silica PEL of 100 μg/m³. In every occupational category, some MNM miners were exposed to respirable crystalline silica levels above the existing PEL. In 9 out of the 11 occupational categories, the percentage of samples exceeding the existing PEL is less than 10 percent, although two have

[9] For a full crosswalk of job codes included in each of these 11 Occupational Categories, please see Appendix C of the preamble. Also, note that the order of the presentation of the 11 Occupational Categories here follows the general sequence of mining activities: first development and production, then ore/mineral processing, then loading, hauling, and dumping, and finally all others.

higher rates, ranging up to more than 19 percent (in the case of stone cutting operators).

Table IV-3: MNM Respirable Dust Samples by Occupation, 2005-2019

Occupation	Number of Samples	Number of Samples with Respirable Crystalline Silica Concentration Greater than 100 μg/m³	Percent of Samples with Respirable Crystalline Silica Concentration Greater than 100 μg/m³
Drillers	2,092	107	5.1%
Stone Cutting Operators	2,446	474	19.4%
Kiln, Mill, and Concentrator Workers	1,802	125	6.9%
Crushing Equipment Operators and Plant Operators	11,565	816	7.1%
Packing Equipment Operators	2,980	278	9.3%
Conveyor Operators	215	24	11.2%
Truck Loading Station Tenders	453	32	7.1%
Operators of Large Powered Haulage Equipment	17,016	378	2.2%
Operators of Small Powered Haulage Equipment	1,110	77	6.9%
Mobile Workers	15,216	1,108	7.3%
Miners in Other Occupations	2,874	120	4.2%
Total	**57,769**	**3,539**	**6.1%**

Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812).

4. Conclusion

This analysis of MSHA inspector sampling data shows that MNM operators have generally met the existing standard. Of the 57,769 respirable dust samples from MNM mines, approximately 6 percent exceeded the existing respirable crystalline silica PEL of 100 μg/m³, although there are several outliers with much higher overexposures. For 9 of the 11 occupational categories, less than 10 percent of the respirable dust samples had concentrations over the existing PEL of 100 μg/m³ for respirable crystalline silica. In addition, about 80 percent of samples taken from stone cutting operators did not exceed the existing PEL, which historically has had high exposures to respirable dust and respirable crystalline silica; [10] nevertheless, this occupation continues to experience the highest overexposures relative to other MNM occupations. For the categories of drillers, miners in other occupations, and operators of large powered haulage equipment, approximately 5 percent or less of the respirable dust samples showed concentrations over the existing exposure limit.

MSHA believes that improved technology, engineering controls, and better training contributed to the reductions in exposures for miners who work in occupations exposed to the highest levels of respirable crystalline silica. In summary, the analysis of MSHA inspector sampling data indicates that the controls that MNM mine operators are using, together with MSHA's enforcement, have generally been effective in keeping miners' exposure at or below the existing limit of 100 μg/m³.

E. Respirable Crystalline Silica Sampling Results—Coal Mines

To examine coal mine operators' compliance with existing respirable crystalline silica standards, MSHA analyzed RCMD samples collected by MSHA inspectors from 2016 to 2021. (The data analyses for this rulemaking do not include any respirable dust samples collected by coal mine operators.) The analysis below is based on the samples collected by inspectors starting on August 1, 2016, when Phase III of MSHA's 2014 Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors (Coal Dust Rule) (79 FR 24813, May 1, 2014) went into effect. At that time, the exposure limits for RCMD

[10] Analysis of MSHA respirable dust samples from 2005 to 2010 showed that stone and rock saw operators had approximately 20 percent of the sampled exposures exceeding the PEL. Watts *et al.* (2012).

were lowered from 2.0 mg/m³ to 1.5 mg/m³ (MRE equivalent) at underground and surface coal mines, and from 1.0 mg/m³ to 0.5 mg/m³ (MRE equivalent) for intake air at underground coal mines and for Part 90 miners. From August 1, 2016, to July 31, 2021, MSHA inspectors collected a total of 113,607 valid RCMD samples. Of these valid samples, only those collected from the breathing zones of miners were used in the analysis for this rulemaking; no environmental dust samples were included.[11] Of those samples, 63,127 samples that met the minimum mass gain criteria and had no other disqualifying issues were analyzed for respirable quartz and quartz concentrations were determined. The majority of the non-environmental valid samples excluded from this rulemaking analysis were excluded due to insufficient mass. Further information on the valid respirable dust samples that are not included in the rulemaking analysis can be found in Appendix A of the preamble.

Of the 63,127 valid samples analyzed for respirable crystalline silica and used for this analysis, about 1 percent (777 samples) were over the existing quartz exposure limit of 100 µg/m³ (MRE equivalent) for a full shift, calculated as a TWA.[12] Overexposure rates (the percent of samples above the exposure limit, on average across all coal mining occupations) decreased by nearly a quarter between the first half and the second half of the 2016–2021 period. As in MNM mines, different miner occupations had different overexposure rates. Using broader groupings, surface mines experienced higher rates of overexposure than underground mines (2.4 percent versus 1.0 percent, respectively).

1. Annual Results of Coal Respirable Crystalline Silica Samples

In examining trends from one year to the next, the discussion below focuses on the samples collected in the 6 calendar years from 2016 to 2021. The number of samples per year was stable from 2017 to 2019 before decreasing in 2020.[13] The overexposure rate decreased across the entire 2016 to 2021 period, from 1.41 percent in 2016 to 0.95 percent in 2021. As shown in Table IV–4, a review of the 6 calendar years reveals that the overexposure rate decreased by nearly a quarter from 2016–2018 (1.38 percent) to 2019–2021 (1.07 percent).

Table IV-4: Respirable Coal Mine Dust Samples, 2016–2021

Year	Number of Samples	Number of Samples with Respirable Crystalline Silica Concentration Greater than 100 µg/m³ MRE	Percent of Samples with Respirable Crystalline Silica Concentration Greater than 100 µg/m³ MRE
2016*	4,879	69	1.4%
2017	13,787	190	1.4%
2018	14,054	194	1.4%
2019	13,745	153	1.1%
2020	10,267	110	1.1%
2021*	6,395	61	1.0%
Total	**63,127**	**777**	**1.2%**

* The 2016 data represents respirable crystalline silica samples from August 1 to December 31, 2016, and the 2021 data represents respirable crystalline silica samples from January 1 to July 31, 2021.

Source: MSHA MSIS respirable crystalline silica data for the Coal Industry, August 1, 2016, through July 31, 2021 (version 20220617).

2. Analysis of Coal Respirable Crystalline Silica Samples by Location

Coal mining activities differ depending on the characteristics and locations of coal seams. When coal seams are several hundred feet below the surface, miners tunnel into the earth and use underground mining equipment to extract coal, whereas miners at surface coal mines remove topsoil and layers of rock to expose coal seams. Due to these differences, it is important to examine the respirable crystalline silica data by location to determine how underground and surface coal miners differ in occupational exposure to respirable crystalline silica.

Table IV–5, which presents the overexposure rate by type of mine where respirable coal mine dust samples were collected, shows that samples from surface coal mines reflected higher rates of overexposure than samples from underground mines.

[11] Environmental samples were not included in the analysis to be consistent with the proposed sampling requirements to determine individual miner exposure.

[12] The conversion between ISO values and MRE values uses the NIOSH conversion factor of 0.857. In the 1995b Criteria Document, NIOSH presented an empirically derived conversion factor of 0.857 for comparing current (MRE) and recommended (ISO) respirable dust sampling criteria using the 10 mm Dorr-Oliver nylon cyclone operated at 2.0 and 1.7 L/min, respectively (*i.e.,* 1.5 mg/m³ BMRC–MRE = 1.29 mg/m³ ISO).

[13] The coal samples for 2016 begin in August of that year and the coal samples for 2021 end in July of that year.

Out of the 53,095 respirable coal mine dust samples from underground mines, 1 percent (537 samples) were over the existing exposure limit. By contrast, there were 10,032 samples from surface coal mines, and approximately 2.4 percent (240 samples) of those samples were over the existing exposure limit.

Table IV-5: Respirable Coal Mine Dust Samples by Location, 2016 - 2021

Location	Number of Samples	Number of Samples with Respirable Crystalline Silica Concentration Greater than 100 µg/m^3 MRE	Percent of Samples with Respirable Crystalline Silica Concentration Greater than 100 µg/m^3 MRE
Underground Mines	53,095	537	1.0%
Surface Mines	10,032	240	2.4%
Total	**63,127**	**777**	**1.2%**

Source: MSHA MSIS respirable crystalline silica data for the Coal Industry, August 1, 2016, through July 31, 2021 (version 20220617).

3. Analysis of Coal Respirable Crystalline Silica Samples by Occupation

To assess the exposure to respirable crystalline silica of miners in different occupations, MSHA has consolidated the 220 job codes for coal mines into 9 occupational categories (using a similar process to the one it used for the MNM mines, but with different job codes and categories). For the coal mine occupational categories,[14] a distinction is made between occupations based on whether the job tasks are being performed at the surface of a mine or underground. For example, bulldozer operators are assigned to the operators of large powered haulage equipment grouping and then sorted into separate occupational categories based on whether they are working at the surface of a mine or underground.

Of the nine occupational categories used for coal miners, the five underground categories are:

(1) Continuous Mining Machine Operators (*e.g.,* Coal Drill Helper and Coal Drill Operator),

(2) Longwall Workers (*e.g.,* Headgate Operator and Jack Setter (Longwall)),

(3) Roof Bolters (*e.g.,* Roof Bolter and Roof Bolter Helper),

(4) Operators of Large Powered Haulage Equipment (*e.g.,* Shuttle Car Operator, Tractor Operator/Motorman, Scoop Car Operator), and

(5) All Other Underground Miners (*e.g.,* Electrician, Mechanic, Belt Cleaner and Laborer, etc.).

The four surface occupational categories are:

(1) Drillers (*e.g.,* Coal Drill Operator, Coal Drill Helper, and Auger Operator),

(2) Crusher Operators (*e.g.,* Crusher Attendant, Washer Operator, and Scalper-Screen Operator),

(3) Operators of Large Powered Haulage Equipment (*e.g.,* Backhoe Operator, Forklift Operator, and Bulldozer Operator), and

(4) Mobile Workers (*e.g.,* Electrician, Mechanic, Blaster, Laborer, etc.).

The most sampled occupational category was operators of large powered haulage equipment (underground), representing approximately 34 percent of the samples taken. The least sampled occupational category was crusher operators (surface), consisting of 1 percent of the samples taken. Table IV–6 displays the number and percent of respirable coal mine dust samples with quartz greater than the existing exposure limit for each occupational category.

[14] For a full crosswalk of which job codes were included in each of these nine Occupational Categories, please see Appendix C of the preamble.

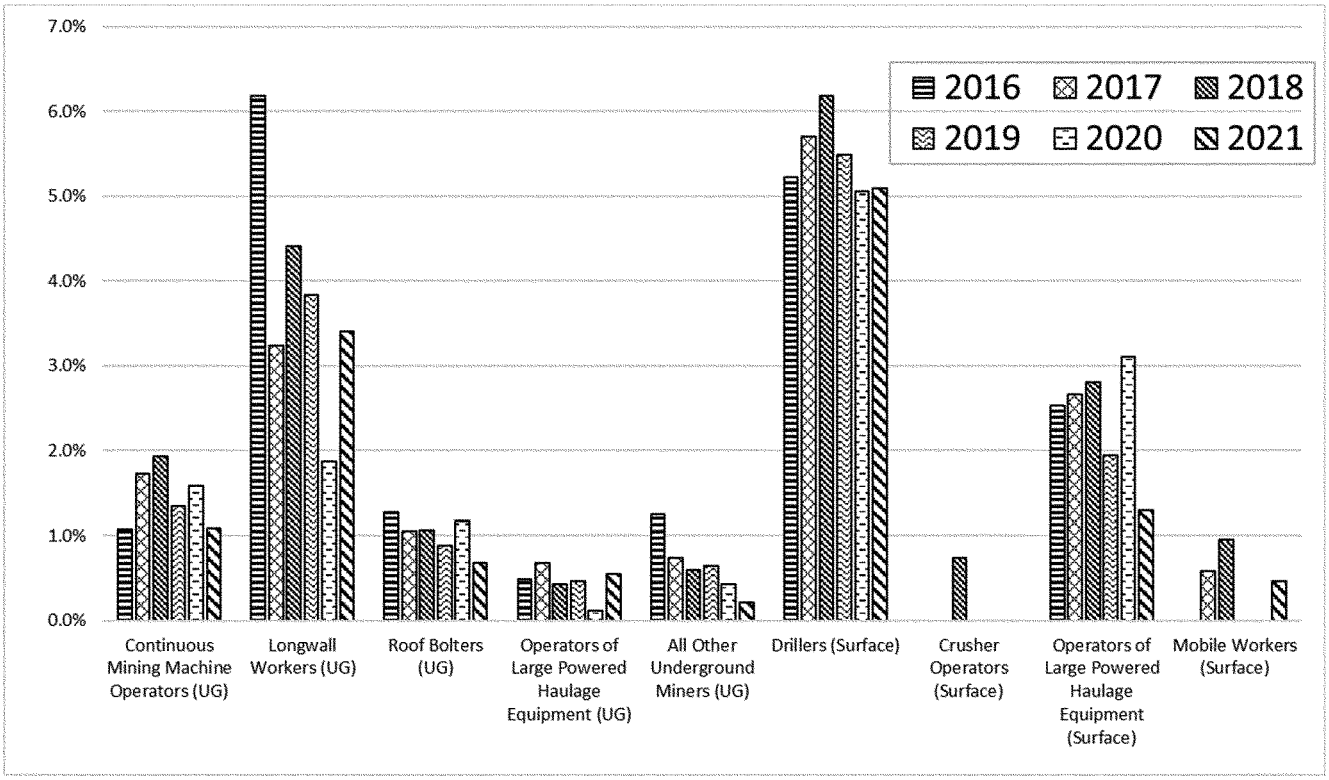
Table IV-6: Respirable Coal Mine Dust Samples by Occupation, 2016–2021

Occupation	Number of Samples	Number of Samples with Respirable Crystalline Silica Concentration Greater than 100 µg/m^3 MRE	Percent of Samples with Respirable Crystalline Silica Concentration Greater than 100 µg/m^3 MRE
Continuous Mining Machine Operators (UG)	9,910	154	1.6%
Longwall Workers (UG)	3,176	115	3.6%
Roof Bolters (UG)	14,306	145	1.0%
Operators of Large Powered Haulage Equipment (UG)	21,777	99	0.5%
All Other Underground Miners (UG)	3,926	24	0.6%
Drillers (Surface)	1,762	98	5.6%
Crusher Operators (Surface)	631	1	0.2%
Operators of Large Powered Haulage Equipment (Surface)	5,313	132	2.5%
Mobile Workers (Surface)	2,326	9	0.4%
Total	**63,127**	**777**	**1.2%**

Source: MSHA MSIS respirable crystalline silica data for the Coal Industry, August 1, 2016, through July 31, 2021 (version 20220617).

Looking at trends, every occupational category shows a decrease in overexposure rates over time. See Figure IV–1. Most of the nine categories had lower rates of overexposure in the 2019–2021 period than in the 2016–2018 period.

Figure IV-1: Percent of RCMD Samples with Respirable Crystalline Silica Concentration greater than 100 MRE μg/m³ (MRE) by Occupational Category*



* For Crusher Operators (Surface), only one sample with a quartz concentration greater than 100 μg/m³ MRE occurred (in 2018); and for Mobile Workers (Surface), only nine samples with a quartz concentration greater than 100 μg/m³ MRE occurred (three in 2017, five in 2018 and one in 2021).
Source: MSHA MSIS respirable crystalline silica data for the Coal Industry, August 1, 2016, through July 31, 2021 (version 20220617).

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In all occupational categories, coal miners were sometimes exposed to respirable crystalline silica levels above the existing exposure limit. But the sampling data showed that coal mine operators can generally comply with the existing exposure limit. For example, although mining tasks performed by the occupational category of roof bolters (underground) historically resulted in high levels of overexposure to quartz, the low levels of overexposure for that occupation in 2016–2021 (*i.e.,* 1 percent) suggest that roof bolters now benefit from the improved respirable dust standard, improved technology, and better training.[15] Over the 2016–2021 period, coal miners in the occupational category drillers (surface) were the most frequently overexposed, with approximately 6 percent of samples over the existing quartz limit; they were followed by longwall workers (underground) (about 4 percent), operators of large powered haulage equipment (surface) (about 3 percent), and continuous mining machine operators (underground) (about 2 percent). For all other occupational categories, the overexposure rate was less than 1 percent.

4. Conclusion

This analysis of MSHA inspector sampling data shows that coal mine operators can generally comply with the existing standards related to quartz. Of the 63,127 valid respirable dust samples from coal mines over the most recent 5-year period, 1.2 percent had respirable quartz over the existing exposure limit of 100 μg/m³ (MRE equivalent) for a full-shift exposure, calculated as a TWA. Seven of the nine occupational categories had overexposure rates of 2.5 percent or less. Roof bolters (underground), which historically have had high exposures to respirable dust and respirable crystalline silica, had overexposure rates of 1 percent over this recent period. The data demonstrates that the controls that coal mine operators are using, together with MSHA's enforcement, have generally been effective in keeping miners' exposure to respirable crystalline silica at or below the existing exposure limit.

V. Health Effects Summary

This section summarizes the health effects from occupational exposure to respirable crystalline silica. MSHA's full analysis is contained in the standalone document, entitled *Effects of Occupational Exposure to Respirable Crystalline Silica on the Health of Miners* (Health Effects document), which has been placed in the rulemaking docket for the MSHA silica rulemaking (RIN 1219–AB36, Docket ID no. MSHA–2023–0001) and is available on MSHA's website.

The purpose of the Agency's scientific review is to present MSHA's preliminary findings on the nature of the hazards presented by exposure to respirable crystalline silica and to present the basis for the Preliminary

[15] The drilling operation in the roof bolting process, especially in hard rock, generates excessive respirable coal and quartz dusts, which could expose the roof bolting operator to continued health risks (Jiang and Luo, 2021).

Risk Analysis (PRA) to follow. (A PRA summary is presented in Section VI of this preamble and a standalone document entitled *Preliminary Risk Analysis* has been placed in the rulemaking docket for the MSHA silica rulemaking (RIN 1219–AB36, Docket ID no. MSHA–2023–0001) and is available on MSHA's website.) MSHA reviewed a wide range of health research literature that included more than 600 studies exploring the relationship between respirable crystalline silica exposure and resultant health effects in miners and other workers across various industries. After discussing the toxicity of respirable crystalline silica, MSHA's review of the literature covers the following topics:

(1) Silicosis;
(2) NMRD, excluding silicosis;
(3) Lung cancer and cancer at other sites;
(4) Renal disease; and
(5) Autoimmune diseases.

To develop this literature review, MSHA expanded upon OSHA's (2013b) review of the health effects literature to support its final respirable crystalline silica rule (81 FR 16286, March 25, 2016). MSHA also drew upon numerous studies conducted by NIOSH, the International Agency for Research on Cancer (IARC), the National Toxicology Program (NTP), and other researchers. These studies provided epidemiological data, morbidity (having a disease or a symptom of disease) and mortality (disease resulting in death) analyses, progression and pathology evaluations, death certificate and autopsy reviews, medical surveillance data, health hazard assessments, *in vivo* (animal) and *in vitro* toxicity data, and other toxicological reviews. These sources are cited throughout this summary and are listed in the References section of the Health Effects document. Additionally, these sources appear in the rulemaking docket.

MSHA's literature review is based on a weight-of-evidence approach, in which studies are evaluated for their overall quality. Causal inferences are drawn based on a determination of whether there is substantial evidence that exposure increases the risk of a particular adverse health effect. Factors MSHA considered in this weight-of-evidence analysis include: size of the cohort studied and power of the study to detect a sufficiently low level of disease risk, duration of follow-up of the study population, potential for study bias (such as selection bias or healthy worker effects), and adequacy of underlying exposure information for examining exposure-response relationships. Of the studies examined in the Health Effects document, studies were deemed suitable for inclusion in the PRA if there was adequate quantitative information on exposure and disease risks and the study was judged to be of sufficiently high quality according to the above criteria.

The understanding of how respirable crystalline silica causes adverse health effects has evolved greatly in the more than 45 years since the Mine Act was passed in 1977. Based on its extensive review of health research literature, MSHA has preliminarily determined that occupational exposure to respirable crystalline silica causes silicosis (acute silicosis, accelerated silicosis, simple chronic silicosis, and PMF), NMRD (including COPD), and lung cancer, and it also causes end-stage renal disease (ESRD). In addition, MSHA believes that respirable crystalline silica exposure is causally related to the development of some autoimmune disorders through inflammation pathways. Each of these effects is exposure-dependent, chronic, irreversible, and potentially disabling or fatal. MSHA's review of the literature indicates that under the existing standards found in 30 CFR parts 56, 57, 70, 71, and 90, miners are still developing preventable diseases that are material impairments of health and functional capacity. Based on the assessment of health effects of respirable crystalline silica, MSHA preliminarily concludes that the proposed rule, which would lower the exposure limits in MNM and coal mining to 50 μg/m^3 and establish an action level of 25 μg/m^3 for a full-shift exposure, calculated as an 8-hour TWA, would reduce the risk of miners developing silicosis, NMRD, lung cancer, and renal disease.

A. Toxicity of Respirable Crystalline Silica

Respirable crystalline silica is released into the environment during mining or milling processes, thus creating an airborne hazard. The particles may be freshly generated or re-suspended from surfaces on which it is deposited in mines or mills. Respirable crystalline silica particles may be irregularly shaped and variable in size. Inhaled respirable crystalline silica can be deposited throughout the lungs. Some pulmonary clearance of particles deposited in the deep lung (*i.e.,* alveolar region) may occur, but a large number of particles can be retained and initiate or advance the disease process. The toxicity of these retained particles is amplified because the particles are not water-soluble and do not undergo metabolism into less toxic compounds. This is important biologically and physiologically, as insoluble dusts may remain in the lungs for prolonged periods, resulting in a variety of cellular responses that can lead to pulmonary disease (ATSDR, 2019). Respirable crystalline silica particles that are cleared from the lungs by the lymphatic system are distributed to the lymph nodes, blood, liver, spleen, and kidneys, potentially accumulating in these other organ systems and causing renal disease and other adverse health effects (ATSDR, 2019).

Physical characteristics relevant to the toxicity of respirable crystalline silica primarily relate to its size and surface characteristics. Researchers believe that the size and surface characteristics play important roles in how respirable crystalline silica causes tissue damage. Any factor that influences or modifies these physical characteristics may alter the toxicity of respirable crystalline silica by affecting the mechanistic processes (OSHA, 2013b; ATSDR, 2019).

Inflammation pathways affect disease development in various systems and tissues in the human body. For instance, it has been proposed that lung fibrosis caused by exposure to respirable crystalline silica results from a cycle of cell damage, oxidant generation, inflammation, scarring, and ultimately fibrosis. This has been reported by Nolan *et al.* (1981), Shi *et al.* (1989, 1998), Lapp and Castranova (1993), Brown and Donaldson (1996), Parker and Banks (1998), Castranova and Vallyathan (2000), Castranova (2004), Fubini *et al.* (2004), Hu *et al.* (2017), Benmerzoug *et al.* (2018), and Yu *et al.* (2020).

Respirable crystalline silica entering the lungs could cause damage by a variety of mechanisms, including direct damage to lung cells. In addition, activation or stimulation by respirable crystalline silica of alveolar macrophages (after phagocytosis) and/or alveolar epithelial cells may lead to: (1) release of cytotoxic enzymes, reactive oxygen species (ROS), reactive nitrogen species (RNS), inflammatory cytokines and chemokines, (2) eventual cell death with the release of respirable crystalline silica, and (3) recruitment and activation of polymorphonuclear leukocytes (PMNs) and additional alveolar macrophages. The elevated production of ROS/RNS would result in oxidative stress and lung injury that stimulates alveolar macrophages, ultimately resulting in fibroblast activation and pulmonary fibrosis. The prolonged recruitment of macrophages and PMN causes a persistent inflammation, regarded as a primary step in the development of silicosis.

The strong immune response in the lung following exposure to respirable

crystalline silica may also be linked to a variety of extra-pulmonary adverse effects such as hypergammaglobulinemia, production of rheumatoid factor, anti-nuclear antibodies, and release of other immune complexes (Parks *et al.,* 1999, Haustein and Anderegg, 1988; Green and Vallyathan, 1996). Respirable crystalline silica exposure has also been associated with nonmalignant renal disease through the initiation of immunological injury to the glomerulus of the kidney (Calvert *et al.,* 1997).

Proposed mechanisms involved in respirable crystalline silica-induced carcinogenesis have included: direct DNA damage, inhibition of the p53 tumor suppressor gene, loss of cell cycle regulation; stimulation of growth factors, and production on oncogenes (Brown and Donaldson, 1996; Castranova, 2004; Fubini *et al.,* 2004; Nolan *et al.,* 1981; Shi *et al.,* 1989, 1998).

B. Diseases

1. Silicosis

Silicosis is a progressive occupational disease that has long been identified as a cause of lung disease in miners. Based on its review of the literature, MSHA has preliminarily determined that exposure to respirable crystalline silica causes silicosis (acute silicosis, accelerated silicosis, simple chronic silicosis, and PMF) in MNM and coal miners, which is a significant cause of serious morbidity and early mortality in this occupational cohort (Mazurek and Attfield, 2008; Mazurek and Wood, 2008a, 2008b; Mazurek *et al.,* 2015, 2018).

When respirable crystalline silica particles accumulate in the lungs, they cause an inflammatory reaction, leading to lung damage and scarring. Silicosis can continue to develop even after silica exposure has ceased. It is not reversible, and there is only symptomatic treatment, including bronchodilators to maintain open airways, oxygen therapy, and lung transplants in the most severe cases (Cochrane *et al.,* 1956; Ng *et al.,* 1987a; Lee *et al.,* 2001; Mohebbi and Zubeyri, 2007; Kimura *et al.,* 2010; Laney *et al.,* 2017; Almberg *et al.,* 2020; Hall *et al.,* 2022).

Respirable crystalline silica exposure in MNM miners can lead to all three forms of silicosis (acute, accelerated, and chronic). These forms differ in the rate of exposure, pathology (*i.e.,* the structural and functional changes produced by the disease), and latency period from exposure to disease onset. Acute silicosis is an aggressive inflammatory process following intense exposure to respirable crystalline silica for ''periods measured in months rather than years'' (Cowie and Becklake, 2016). It causes alveolar proteinosis (accumulation of lipoproteins in the alveoli of the lungs). This restructuring of the lungs leads to symptoms such as coughing and difficult or labored breathing, and it often progresses to profound disability and death due to respiratory failure or infectious complications. In addition, symptoms often advance even after exposure has stopped, primarily due to the massive amount of protein debris and fluid that collects in the alveoli, which can suffocate the patient. The radiographic (X-ray) appearance and results of microscopic examination of acute silicosis are like those of idiopathic pulmonary alveolar proteinosis.

Chronic silicosis is the most frequently observed form of silicosis in the United States today (Banks, 2005; OSHA, 2013b; Cowie and Becklake, 2016). It is also the most common form of silicosis diagnosed in miners. Chronic silicosis is a fibrotic process that typically follows less intense respirable crystalline silica exposure of 10 or more years (Becklake, 1994; Balaan and Banks, 1998; NIOSH, 2002b, Kambouchner and Bernaudin, 2015; Cowie and Becklake, 2016; Rosental, 2017; ATSDR, 2019; Barnes *et al.,* 2019; Hoy and Chambers, 2020). It is identified by the presence of the silicotic islet or nodule that is an agent-specific fibrotic lesion and is recognized by its pathology (Balaan and Banks, 1998). Chronic silicosis develops slowly and creates rounded whorls of scar tissue that progressively destroy the normal structure and function of the lungs. In addition, the scar tissue opacities become visible by chest X-ray or computerized tomography (CT) only after the disease is well established and the lesions become large enough to view. As a result, surveys based on chest X-ray films usually underestimate the true prevalence of silicosis (Craighead and Vallathol, 1980; Hnizdo *et al.,* 1993; Rosenman *et al.,* 1997; Cohen and Velho, 2002). However, the lesions eventually advance and result in lung restriction, reduced lung volumes, decreased pulmonary compliance, and reduction in the gas exchange capabilities of the lungs (Balaan and Banks, 1998). As the disease progresses, affected miners may have a chronic cough, sputum production, shortness of breath, and reduced pulmonary function.

Accelerated silicosis includes both inflammation and fibrosis and is associated with intense respirable crystalline silica exposure. Accelerated silicosis usually manifests over a period of 3 to 10 years (Cowie and Becklake, 2016), but it can develop in as little as 2 to 5 years if exposure is sufficiently intense (Davis, 1996). Accelerated silicosis may have features of both chronic and acute silicosis (*i.e.,* alveolar proteinosis in addition to X-ray evidence of fibrosis). Although the symptoms are similar to those of chronic silicosis, the clinical and radiographic progression of accelerated silicosis evolves more rapidly, and often leads to PMF, severe respiratory impairment, and respiratory failure. Accelerated silicosis can progress with associated morbidity and mortality, even if exposure ceases.

Among coal miners, silicosis is usually found in conjunction with simple coal worker's pneumoconiosis (CWP) (Castranova and Vallyathan, 2000) because of their exposures to RCMD that contains respirable crystalline silica. Coal miners also face an added risk of developing mixed-dust pneumoconiosis (MDP) (includes the presence of coal dust macules), mixed-dust fibrosis (MDF), and/or silicotic nodules (Honma *et al.,* 2004, see Figure 2, Green 2019). The autopsy studies on coal miners that MSHA reviewed support a pathological relationship between mixed-RCMD or respirable crystalline silica exposures and PMF, silicosis, and CWP (Attfield *et al.,* 1994; Cohen *et al.,* 2016, 2019, 2022; Davis *et al.,* 1979; Douglas *et al.,* 1986; Fernie and Ruckley, 1987; Green *et al.,* 1989, 1998b; Ruckley *et al.,* 1981, 1984; Vallyathan *et al.,* 2011). Autopsy studies in British coal miners indicated that the more advanced the disease, the more mixed coal mine dust components were retained in the lung tissue (Ruckley *et al.,* 1984; Douglas *et al.,* 1986). Green *et al.* (1998b) determined that of 4,115 coal miners with pneumoconiosis autopsied as part of the National Coal Workers' Autopsy Study (NCWAS), 39 percent had mixed dust nodules and 23 percent had silicotic nodules.

PMF or ''complicated silicosis'' has been diagnosed in both coal and MNM miners exposed to dusts containing respirable crystalline silica. Recent literature on the pathophysiology of PMF supports the importance of crystalline silica as a cause of PMF in silica-exposed workers such as coal miners from the United States (Cohen *et al.,* 2016, 2022), sandblasters (Abraham and Wiesenfeld, 1997; Hughes *et al.,* 1982), industrial sand workers (Vacek *et al.,* 2019), hard rock miners (Verma *et al.,* 1982, 2008), and gold miners (Carneiro *et al.,* 2006a; Tse *et al.,* 2007b).

a. Classifying Radiographic Findings of Silicosis

Two classification methods used to characterize the radiographic findings of silicosis in chest X-rays are described in this literature review: the International Labour Office (ILO) Standardized System and the Chinese categorization system.[16]

To describe the presence and severity of pneumoconiosis from chest X-rays or digital radiographic images, the ILO developed a standardized system to classify the opacities identified (ILO, 1980, 2002, 2011, 2022). The ILO system grades the size, shape, and profusion (frequency) of opacities in the lungs. The density of opacities is classified on a 4-point major category scale (category 0, 1, 2, or 3), with each major category divided into three subcategories, giving a 12-point scale between 0/− and 3/+. Differences between ILO categories are subtle. For each subcategory, the top number indicates the major category that the profusion most closely resembles, and the bottom number indicates the major category that was given secondary consideration. For example, film readers may assign classifications such as 1/0, which means the reader classified it as category 1, but category 0 (normal) was also considered (ILO, 2022). Major category 0 indicates the absence of visible opacities and categories 1 to 3 reflect increasing profusion of opacities and a concomitant increase in severity of disease.

MSHA's analysis of silicosis studies uses NIOSH's surveillance case definition to determine the presence of silicosis. NIOSH defines the presence of silicosis in terms of the ILO system and considers a small opacity profusion score of 1/0 or greater to indicate pneumoconiosis (NIOSH, 2014b). This definition originated from testimony before Congress regarding the 1969 Coal Act where the Public Health Service recommended that miners be removed from dusty environments as soon as they showed ''minimal effects'' of dust exposure on a chest X-ray (*i.e.,* pinpoint, dispersed micro-nodular lesions).[17] MSHA interprets ''minimal effects'' to mean an X-ray ILO profusion score of category 1/0 or greater.

However, some studies in MSHA's literature review use the Chinese categorization scheme, which includes four categories of silicosis: a suspected case (0+), stage I, stage II, or stage III. The four categories correspond to ILO profusion category 0/1, category 1, category 2, and category 3, respectively. A suspected case of silicosis (0+) in a dust-exposed worker refers to a dust response in the lung and its corresponding lymph nodes, or a scale and severity of small opacities that fall short of the level observed in a stage I case of silicosis (Chen *et al.,* 2001; Yang *et al.,* 2006). Under this scheme, a panel of three radiologists determines the presence and severity of radiographic changes consistent with pneumoconiosis.

b. Progression and Associated Impairment

Progression of silicosis is shown when there are changes or worsening of the opacities in the lungs, and sequential chest radiographs are classified higher by one or more subcategories (*e.g.,* from 1/0 to 1/1) because of changes in the location, thickness, or extent of lung abnormalities and/or the presence of calcifications. The higher the category number, the more severe the disease. Due to the uncertainty in scoring films, some investigators count progression as advancing two or more subcategories, such as 1/0 to 1/2.

MSHA reviewed studies referenced by OSHA (2013b) that examined the relationship between exposure and progression, as well as between X-ray findings and pulmonary function. Additionally, MSHA considered more recent literature (Dumavibhat *et al.,* 2013; Mohebbi and Zubeyri, 2007; Wade *et al.,* 2011) not previously reviewed by OSHA (2013b).

Overall, the studies indicate that progression is more likely with continued exposure, especially high average levels of exposure. Progression is also more likely for miners with higher ILO profusion classifications. As discussed previously, progression of disease may continue after miners are no longer exposed to respirable crystalline silica (Almberg *et al.,* 2020; Cochrane *et al.,* 1956; Hall *et al.,* 2020b; Hurley *et al.,* 1987; Kimura *et al.,* 2010; Maclaren *et al.,* 1985). In addition, although lung function impairment is highly correlated with chest X-ray films indicating silicosis, researchers cautioned that respirable crystalline silica exposure could impair lung function before it is detected by X-ray.

Of the studies in which silicosis progression was documented in populations of workers, four included quantitative exposure data that were based on either existing exposure levels or historical measurements of respirable crystalline silica (Hessel *et al.,* 1988 study of gold miners; Miller and MacCalman, 2010 study of coal miners; Miller *et al.,* 1998 study of coal miners; Ng *et al.,* 1987a study of granite miners). In some studies, episodic exposures to high average concentrations were documented and considered in the analysis. These exposures were strong predictors of more rapid progression beyond that predicted by cumulative exposure alone. Otherwise, the variable most strongly associated in these studies with progression of silicosis was cumulative respirable crystalline silica exposure (*i.e.,* the product of the concentration times duration of exposure, which is summed over time) (Hessel *et al.,* 1988; Ng *et al.,* 1987a; Miller and MacCalman, 2010; Miller *et al.,* 1998). In the absence of concentration measurements, duration of employment in specific occupations known to involve exposure to high levels of respirable dust has been used as a surrogate for cumulative exposure to respirable crystalline silica. It has also been found to be associated with the progression of silicosis (Ogawa *et al.,* 2003a).

Miller *et al.* (1998) examined the impact of high quartz exposures on silicosis disease progression on 547 British coal miners from 1990 to 1991 and evaluated chest X-ray changes after the mines closed in 1981. The study reviewed chest X-rays taken during health surveys conducted between 1954 and 1978 and data from extensive exposure monitoring conducted between 1964 and 1978. For some occupations, exposure was high because miners had to dig through a sandstone stratum to reach the coal. For example, quarterly mean respirable crystalline silica (quartz) concentrations ranged from 1,000 to 3,000 μg/m^3 (1–3 mg/m^3), and for a brief period, concentrations exceeded 10,000 μg/m^3 (10 mg/m^3) for one job. Some of these high exposures were associated with accelerated disease progression.

Buchanan *et al.* (2003) reviewed the exposure history and chest X-ray progression of 371 retired miners and found that short-term exposures (*i.e.,* ''a few months'') to high concentrations of respirable crystalline silica (*e.g.,* >2,000 μg/m^3, >2 mg/m^3) increased the silicosis risk by three-fold (compared to the risk of cumulative exposure alone) (see the

[16] The ''Radiological Diagnostic Criteria of Pneumoconiosis and Principles for Management of Pneumoconiosis'' (GB5906–86) (Chen *et al.,* 2001; Yang *et al.,* 2006).

[17] On March 26, 1969, Charles C. Johnson, Jr., Administrator, Consumer Protection and Environmental Health Service, PHS, U.S. Department of Health, Education, and Welfare, testified before the General Subcommittee on Labor and presented remarks of the Surgeon General. They are referenced in the 91st Congress House of Representatives Report, 1st Session No. 91–563, Federal Coal Mine Health and Safety Act, October 13, 1969 (*https://arlweb.msha.gov/SOLICITOR/COALACT/69hous.htm*).

separate *Preliminary Risk Analysis* document).

The risks of increased rate of progression, predicted by Buchanan *et al.* (2003) have been seen in coal miners (*e.g.,* Cohen *et al.,* 2016; Laney *et al.,* 2010, 2017; Miller *et al.,* 1998), metal (Hessel *et al.,* 1988; Hnizdo and Sluis-Cremer, 1993; Nelson, 2013), and nonmetal miners such as silica plant and ground silica mill workers, whetstone cutters, and silica flour packers (Mohebbi and Zubeyri, 2007; NIOSH 2000a,b; Ogawa *et al.,* 2003a). Accordingly, it is important to limit higher exposures to respirable crystalline silica in order to minimize the risk of rapid progressive pneumoconiosis (RPP) in miners.

The results of many surveillance studies conducted by NIOSH as part of the Coal Workers' Health Surveillance Program indicate that the pathology of pneumoconiosis in coal miners has changed over time, in part due to increased exposure to respirable crystalline silica. The studies of Cohen *et al.* (2016, 2022) indicate that a RPP develops due to increased exposure to respirable crystalline silica among contemporary coal miners as compared to historical coal miners. Through the examination of pathologic materials from 23 contemporary (born in or after 1930) and 62 historical coal miners (born between 1910 and 1930) with severe pneumoconiosis, who were autopsied as part of NCWAS, Cohen *et al.* (2022) found a significantly higher proportion of silica-type PMF among contemporary miners (57 percent vs. 18 percent, $p < 0.001$). They also found that mineral dust alveolar proteinosis (MDAP) was more common in the current generation of miners and that the lung tissues of contemporary coal miners contained a significantly greater percentage and concentration of silica particles than those of past generations of miners.

c. Occupation-Based Epidemiological Studies

MSHA reviewed the occupation-based epidemiological literature (*i.e.,* studies that examine health outcomes among workers and their potential association with conditions in the workplace). MSHA's review included the occupation-based literature OSHA cited in developing its respirable crystalline silica standard (OSHA, 2013b). Overall, OSHA found substantial evidence suggesting that occupational exposure to respirable crystalline silica increases the risk of silicosis, and MSHA concurs with this conclusion. MSHA also reviewed additional occupation-based literature specific to respirable crystalline silica exposure in MNM and coal miners and preliminarily concludes that respirable crystalline silica exposure increases the risk of silicosis morbidity and early mortality. One study examined the acute and accelerated silicosis outbreak that occurred during and after construction of Hawk's Nest Tunnel in West Virginia from 1930 to 1931. There, an estimated 2,500 men worked in a tunnel drilling rock consisting of 90 percent silica or more. The study later estimated that at least 764 of the 2,500 workers (30.6 percent) died from acute or accelerated silicosis (Cherniack, 1986). There was also high turnover among the tunnel workers, with an average length of employment underground of only about 2 months.

In a population of granite quarry workers (mean length of employment: 23.4 years) exposed to an average respirable crystalline silica concentration of 480 $\mu g/m^3$ (0.48 mg/m^3), 45 percent of those diagnosed with simple silicosis showed radiological progression of disease 2 to 10 years after diagnosis (Ng *et al.,* 1987a). Among a population of gold miners, 92 percent showed progression after 14 years (Hessel *et al.,* 1988). Chinese factory workers and miners who were categorized under the Chinese system of X-ray classification as ''suspected'' silicosis cases (analogous to ILO 0/1) had a progression rate to stage I (analogous to ILO major category 1) of 48.7 percent, with an average interval of about 5.1 years (Yang *et al.,* 2006).

Strong evidence has shown that lung function deteriorates more rapidly in miners exposed to respirable crystalline silica, especially in those with silicosis (Hughes *et al.,* 1982; Ng and Chan, 1992; Malmberg *et al.,* 1993; Cowie, 1998). The rates of decline in lung function are greater where disease shows evidence of radiologic progression (Bégin *et al.,* 1987; Ng *et al.,* 1987a; Ng and Chan, 1992; Cowie, 1998). The average deterioration of lung function exceeds that in smokers (Hughes *et al.,* 1982).

Blackley *et al.* (2015) found progressive lung function impairment across the range of radiographic profusion of simple CWP in a cohort of 8,230 coal miners that participated in the Enhanced Coal Workers' Health Surveillance Program from 2005 to 2013. There, 269 coal miners had category 1 or 2 simple CWP. This study also found that each increase in profusion score was associated with decreases in various lung function parameters: 1.5 percent (95 percent CI, 1.0 percent–1.9 percent) in forced expiratory volume in one second (FEV_1) percent predicted, 1.0 percent (95 percent CI, 0.6 percent–1.3 percent) forced vital capacity (FVC) percent predicted, and 0.6 percent (95 percent CI, 0.4 percent–0.8 FEV_1/FVC).

Overall, MSHA preliminarily agrees with OSHA's conclusion that substantial evidence suggests that occupational exposure to respirable crystalline silica increases the risk of silicosis. MSHA also preliminarily concludes that respirable crystalline silica exposure increases the risk of silicosis morbidity and early mortality among miners.

d. Surveillance Data

In addition to occupation-based epidemiological studies, MSHA reviewed surveillance studies, which provide and interpret data to facilitate the prevention and control of disease, and preliminarily finds that the prevalence of silicosis generally increases with duration of exposure (work tenure). However, the available statistics may underestimate silicosis-related morbidity and mortality in miners. For example, the following have been reported: (1) misclassification of causes of death (*e.g.,* as TB, chronic bronchitis, emphysema, or *cor pulmonale*); (2) errors in recording occupation on death certificates; and (3) misdiagnosis of disease (Windau *et al.,* 1991; Goodwin *et al.,* 2003; Rosenman *et al.,* 2003, Blackley *et al.,* 2017). Furthermore, chest X-ray findings may lead to missed silicosis cases when fibrotic changes in the lung are not yet visible on chest X-rays. In other words, silicosis may be present but not yet detectable by chest X-ray, or may be more severe than indicated by the assigned profusion score (Craighead and Vallyathan, 1980; Hnizdo *et al.,* 1993; Rosenman *et al.,* 1997).

e. Pulmonary Tuberculosis

Finally, in addition to the relationship between silica exposure and silicosis, studies indicate a relationship between silica exposure, silicosis, and pulmonary TB. OSHA reviewed these and concluded that silica exposure and silicosis increase the risk of pulmonary TB (Cowie, 1994; Hnizdo and Murray, 1998; teWaterNaude *et al.,* 2006). MSHA agrees with this conclusion.

Although early descriptions of dust diseases of the lung did not distinguish between TB and silicosis and most fatal cases described in the first half of the 20th century were likely a combination of silicosis and TB (Castranova *et al.,* 1996), more recent findings have demonstrated that respirable crystalline silica exposure, even without silicosis, increases the risk of infectious (*i.e.,* active) pulmonary TB (Sherson and

Lander, 1990; Cowie, 1994; Hnizdo and Murray, 1998; teWaterNaude *et al.,* 2006). These co-morbid conditions hasten the development of respiratory impairment and increased mortality risk even beyond the risk in unexposed persons with active TB (Banks, 2005).

Ng and Chan (1991) hypothesized that silicosis and TB ''act synergistically'' (*i.e.,* are more than additive) to increase fibrotic scar tissue (leading to massive fibrosis) or to enhance susceptibility to active mycobacterial infection. The authors found that lung fibrosis is common to both diseases, and that both diseases decrease the ability of alveolar macrophages to aid in the clearance of dust or infectious particles.

These findings are also supported by new studies (Ndlovu *et al.,* 2019; Oni and Ehrlich, 2015) published since OSHA's review (2013b). Oni and Ehrlich (2015) reviewed a case of silico-TB in a former gold miner with ILO category 2/2 silicosis. Ndlovu *et al.* (2019) found that in a study sample of South African gold miners who had died from causes other than silicosis between 2005 and 2015, 33 percent of men (n = 254) and 43 percent of women (n = 29) at autopsy were found to have TB, whereas 7 percent of men (n = 54) and 3 percent of women (n = 4) were found to have pulmonary silicosis.

Overall, MSHA agrees with OSHA's conclusion that silica exposure increases the risk of pulmonary TB and that pulmonary TB is a complication of chronic silicosis.

2. Nonmalignant Respiratory Disease (Excluding Silicosis)

In addition to causing silicosis (acute silicosis, accelerated silicosis, simple chronic silicosis, and PMF), exposure to respirable crystalline silica causes other NMRD. NMRD includes emphysema and chronic bronchitis, which are both diagnoses within the category of COPD. Patients with COPD may have chronic bronchitis, emphysema, or both (ATS, 2010a).

Based on its review of the literature, MSHA preliminarily concludes that exposure to respirable crystalline silica increases the risk for mortality from NMRD. The following summarizes MSHA's review of the literature.

a. Emphysema

Emphysema involves the destruction of lung architecture in the alveolar region, causing airway obstruction and impaired gas exchange. In its literature review, OSHA (2013b) concluded that exposure to respirable crystalline silica can increase the risk of emphysema, regardless of whether silicosis is present. OSHA also concluded that this is the case for smokers and that smoking amplifies the effects of respirable crystalline silica exposure, increasing the risk of emphysema. MSHA reviewed the studies cited by OSHA and agrees with its conclusion. The studies reviewed are summarized below.

Becklake *et al.* (1987) determined that a miner who had worked in a high dust environment for 20 years had a greater chance of developing emphysema than a miner who had never worked in a high dust environment. In a retrospective cohort study, Hnizdo *et al.* (1991a) used autopsy lung specimens from 1,553 white gold miners to investigate the types of emphysema caused by respirable crystalline silica and found that the occurrence of emphysema was related to both smoking and dust exposure. This study also found a significant association between emphysema (both panacinar and centriacinar emphysema types) and length of employment for miners working in high dust occupations. A separate study by Hnizdo *et al.* (1994) on life-long non-smoking South African gold miners found that the degree of emphysema was significantly associated with the degree of hilar gland nodules, which the authors suggested might serve as a surrogate for respirable crystalline silica exposure. While Hnizdo *et al.* (2000) conversely found that emphysema prevalence was decreased in relation to dust exposure, the authors suggested that selection bias was responsible for this finding.

The findings of several cross-sectional and case-control studies discussed in the OSHA (2013b) Health Effects Literature were more mixed. For example, de Beer *et al.* (1992) found an increased risk for emphysema; however, the reported odds ratio (OR) was smaller than previously reported by Becklake *et al.* (1987).

The OSHA (2013b) Health Effects Literature also recognized that several of the referenced studies (Becklake *et al.,* 1987 Hnizdo *et al.,* 1994) found that emphysema might occur in respirable crystalline silica-exposed workers who did not have silicosis and suggested a causal relationship between respirable crystalline silica exposure and emphysema. Experimental (animal) studies found that emphysema occurred at lower respirable crystalline silica exposure concentrations than fibrosis in the airways or the appearance of early silicotic nodules (Wright *et al.,* 1988). These findings tended to support human studies that respirable crystalline silica-induced emphysema can occur absent signs of silicosis.

Green and Vallyathan (1996) reviewed several studies of emphysema in workers exposed to silica and found an association between cumulative dust exposure and death from emphysema. The IARC (1997) also reviewed several studies and concluded that exposure to respirable crystalline silica increases the risk of emphysema. Finally, NIOSH (2002b) concluded in its Hazard Review that occupational exposure to respirable crystalline silica is associated with emphysema. However, some epidemiological studies suggested that this effect might be less frequent or absent in non-smokers.

Overall, MSHA agrees with OSHA that exposure to respirable crystalline silica causes emphysema even in the absence of silicosis.

b. Chronic Bronchitis

Chronic bronchitis is long-term inflammation of the bronchi, increasing the risk of lung infections. This condition develops slowly by small increments and ''exists'' when it reaches a certain stage (*i.e.,* the presence of a productive cough sputum production for at least 3 months of the year for at least 2 consecutive years) (ATS, 2010b).

OSHA considered many studies that examined the association between respirable crystalline silica exposure and chronic bronchitis, concluding the following: (1) exposure to respirable crystalline silica causes chronic bronchitis regardless of whether silicosis is present; (2) an exposure-response relationship may exist; and (3) smokers may be at an increased risk of chronic bronchitis compared to non-smokers. MSHA has reviewed the literature and agrees with OSHA's conclusions.

Miller *et al.* (1997) reported a 20 percent increased risk of chronic bronchitis in a British mining cohort compared to the disease occurrence in the general population. Using British pneumoconiosis field research data, Hurley *et al.* (2002) calculated estimates of mixed-RCMD-related disease in British coal miners at exposure levels that were common in the late 1980s and related their lung function and development of chronic bronchitis with their cumulative dust exposure. The authors estimated that by the age of 58, 5.8 percent of these men would report breathlessness for every 100 gram-hour/m^3 dust exposure. The authors also estimated the prevalence of chronic bronchitis at age 58 would be 4 percent per 100 gram-hour/m^3 of dust exposure. These miners averaged over 35 years of tenure in mining and a cumulative respirable dust exposure of 132 gram-hour/m^3.

Cowie and Mabena (1991) found that chronic bronchitis was present in 742 of

1,197 (62 percent) black South African gold miners, and Ng *et al.* (1992b) found a higher prevalence of respiratory symptoms, independent of smoking and age, in Singaporean granite quarry workers exposed to high levels of dust (rock drilling and crushing) compared to those exposed to low levels of dust (maintenance and transport workers). However, Irwig and Rocks (1978) compared symptoms of chronic bronchitis in silicotic and non-silicotic South African gold miners and did not find as clear a relationship as did the above studies, concluding that the symptoms were not statistically more prevalent in the silicotic miners, although prevalence was slightly higher.

Sluis-Cremer *et al.* (1967) found that dust-exposed male smokers had a higher prevalence of chronic bronchitis than non-dust exposed smokers in a gold mining town in South Africa. Similarly, Wiles and Faure (1977) found that the prevalence of chronic bronchitis rose significantly with increasing dust concentration and cumulative dust exposure in South African gold miners of smokers, nonsmokers, and ex-smokers. Rastogi *et al.* (1991) found that female grinders of agate stones in India had a significantly higher prevalence of acute bronchitis, but they had no increase in the prevalence of chronic bronchitis compared to controls matched by socioeconomic status, age, and smoking. However, the study noted that respirable crystalline silica exposure durations were very short, and control workers may also have been exposed to respirable crystalline silica.

Studies examining the effect of years of mining on chronic bronchitis risk were mixed. Samet *et al.* (1984) found that prevalence of symptoms of chronic bronchitis was not associated with years of mining in a population of underground uranium miners, even after adjusting for smoking. However, Holman *et al.* (1987) studied gold miners in West Australia and found that the prevalence of chronic bronchitis, as indicated by ORs (controlled for age and smoking), was significantly increased in those that had worked in the mines for over 1 year, compared to lifetime non-miners. In addition, while other studies found no effect of years of mining on chronic bronchitis risk, those studies often qualified this result with possible confounding factors. For example, Kreiss *et al.* (1989) studied 281 hard-rock (molybdenum) miners and 108 non-miner residents of Leadville, Colorado. They did not find an association between the prevalence of chronic bronchitis and work in the mining industry (Kreiss *et al.,* 1989); however, it is important to note that the mine had been temporarily closed for 5 months when the study began, so miners were not exposed at the time of the study.

The American Thoracic Society (ATS) (1997) published a review finding chronic bronchitis to be common among worker groups exposed to dusty environments contaminated with respirable crystalline silica. NIOSH (2002b) also published a review finding that occupational exposure to respirable crystalline silica has been associated with bronchitis; however, some epidemiological studies suggested this effect might be less frequent or absent in non-smokers.

Finally, Hnizdo *et al.* (1990) found an independent exposure-response relationship between respirable crystalline silica exposure and impaired lung function. For miners with less severe impairment, the effects of smoking and dust together were additive. However, for miners with the most severe impairment, the effects of smoking and dust were synergistic (*i.e.,* more than additive).

Overall, MSHA agrees with OSHA's conclusion that exposure to respirable crystalline silica causes chronic bronchitis regardless of whether silicosis is present and that an exposure-response relationship may exist.

c. Pulmonary Function Impairment

Pulmonary function impairment, generally defined as reduction below the lower limit of normal predicted by reference equations (and in older literature as less than 80 percent predicted) of diffusion capacity for carbon monoxide (DLCOcSB), total lung capacity (TLC), FVC, or FEV_1 is also a common condition of NMRD. Based on its review of the evidence in numerous longitudinal and cross-sectional studies and reviews, OSHA concluded that there is an exposure-response relationship between respirable crystalline silica and the development of impaired lung function. OSHA also concluded that the effect of tobacco smoking on this relationship may be additive or synergistic, and workers who were exposed to respirable crystalline silica but did not show signs of silicosis may also have pulmonary function impairment. MSHA has reviewed the studies cited by OSHA and agrees with their conclusions.

OSHA reviewed several longitudinal studies regarding the relationship between respirable crystalline silica exposure and pulmonary function impairment. To evaluate whether exposure to silica affects pulmonary function in the absence of silicosis, the studies focused on workers who did not exhibit progressive silicosis.

Among both active and retired Vermont granite workers exposed to an average quartz dust exposure level of 60 $\mu g/m^3$, researchers found no exposure-related decreases in pulmonary function (Graham *et al.,* 1981, 1994). However, Eisen *et al.* (1995) found significant pulmonary decrements among a subset of granite workers who left work and consequently did not voluntarily participate in the last of a series of annual pulmonary function tests (termed ''dropouts''). This group experienced steeper declines in lung function compared to the subset of workers who remained at work and participated in all tests (termed ''survivors''), and these declines were significantly related to dust exposure. Exposure-related changes in lung function were also reported in a 12-year study of granite workers (Malmberg *et al.,* 1993), in two 5-year studies of South African miners (Hnizdo, 1992; Cowie, 1998), and in a study of foundry workers whose lung function was assessed between 1978 and 1992 (Hertzberg *et al.,* 2002). Similar reductions in FEV_1 (indicating an airway obstruction) were linked to respirable crystalline silica exposure.

Each of these studies reported their findings in terms of rates of decline in any of several pulmonary function measures (*e.g.,* FEV_1, FVC, FEV_1/FVC). To put these declines in perspective, Eisen *et al.* (1995) reported that the rate of decline in FEV_1 seen among the dropout subgroup of Vermont granite workers was 4 ml per 1,000 $\mu g/m^3$-year (4 ml per mg/m^3-year) of exposure to respirable granite dust. By comparison, FEV_1 declines at a rate of 10 ml/year from smoking one pack of cigarettes daily. From their study of foundry workers, Hertzberg *et al.* (2002) reported a 1.1 ml/year decline in FEV_1 and a 1.6 ml/year decline in FVC for each 1,000 $\mu g/m^3$-year (1 mg/m^3-year) of respirable crystalline silica exposure after controlling for ethnicity and smoking. From these rates of decline, they estimated that exposure to 100 $\mu g/m^3$ of respirable crystalline silica for 40 years would result in a total loss of FEV_1 and FVC that was less than, but still comparable to, smoking a pack of cigarettes daily for 40 years. Hertzberg *et al.* (2002) also estimated that exposure to the existing MSHA standard (100 $\mu g/m^3$) for 40 years would increase the risk of developing abnormal FEV_1 or FVC by factors of 1.68 and 1.42, respectively.

OSHA reviewed cross-sectional studies that described relationships between lung function loss and respirable crystalline silica exposure or

exposure measurement surrogates (*e.g.,* tenure). The results of these studies were similar to those longitudinal studies already discussed. In several studies, respirable crystalline silica exposure was found to reduce lung function of:

- White South African gold miners (Hnizdo *et al.,* 1990),
- Black South African gold miners (Cowie and Mabena, 1991; Irwig and Rocks, 1978),
- Respirable crystalline silica-exposed workers in Quebec (Bégin *et al.,* 1995),
- Rock drilling and crushing workers in Singapore (Ng *et al.,* 1992b),
- Granite shed workers in Vermont (Theriault *et al.,* 1974a, 1974b),
- Aggregate quarry workers and coal miners in Spain (Montes *et al.,* 2004a, 2004b),
- Concrete workers in the Netherlands (Meijer *et al.,* 2001),
- Chinese refractory brick manufacturing workers in an iron-steel plant (Wang *et al.,* 1997),
- Chinese gemstone workers (Ng *et al.,* 1987b),
- Hard-rock miners in Manitoba, Canada (Manfreda *et al.,* 1982) and in Colorado (Kreiss *et al.,* 1989),
- Pottery workers in France (Neukirch *et al.,* 1994),
- Potato sorters in the Netherlands (Jorna *et al.,* 1994),
- Slate workers in Norway (Suhr *et al.,* 2003), and
- Men in a Norwegian community with years of occupational exposure to respirable crystalline silica (quartz) (Humerfelt *et al.,* 1998).

The OSHA (2013b) Health Effects Literature recognized that many of these studies found that pulmonary function impairment: (1) can occur in respirable crystalline silica-exposed workers without silicosis, (2) was still observable when controlling for silicosis in the analysis, and (3) was related to the magnitude and duration of respirable crystalline silica exposure, rather than to the presence or severity of silicosis. Many other studies in the OSHA (2013b) Health Effects Literature have also found a relationship between respirable crystalline silica exposure and lung function impairment, including IARC (1997), the ATS (1997), and Hnizdo and Vallyathan (2003).

MSHA reviewed the studies and agrees with OSHA's finding that there is an exposure-response relationship between respirable crystalline silica and the impairment of lung function. MSHA also agrees with OSHA's finding that the effect of tobacco smoking on this relationship may be additive or synergistic, and that workers who were exposed to respirable crystalline silica, but did not show signs of silicosis, may also have pulmonary function impairment.

3. Carcinogenic Effects

a. Lung Cancer

Lung cancer, an irreversible and usually fatal disease, is a type of cancer that forms in lung tissue. Agreeing with the conclusion of other government and public health organizations that respirable crystalline silica is a ''known human carcinogen,'' MSHA has preliminarily found that the scientific literature supports that respirable crystalline silica exposure significantly increases the risk of lung cancer mortality among miners. This determination is consistent with the conclusions of other government and public health organizations, including the IARC (1997b, 2012), the NTP (2000, 2016), NIOSH (2002b), the ATS (1997), and the American Conference of Governmental Industrial Hygienists (ACGIH®, (2010)). The Agency's determination is supported by epidemiological literature, encompassing more than 85 studies of occupational cohorts from more than a dozen industrial sectors including: granite/stone quarrying and processing (Carta *et al.,* 2001; Attfield and Costello, 2004; Costello *et al.,* 1995; Guénel *et al.,* 1989a,b), industrial sand (Sanderson *et al.,* 2000; Hughes *et al.,* 2001; McDonald *et al.,* 2001, 2005; Rando *et al.,* 2001; Steenland and Sanderson, 2001), MNM mining (Steenland and Brown, 1995a; deKlerk and Musk, 1998; Roscoe *et al.,* 1995; Hessel *et al.,* 1986, 1990; Hnizdo and Sluis-Cremer, 1991; Reid and Sluis-Cremer, 1996; Hnizdo *et al.,* 1997; Chen *et al.,* 1992; McLaughlin *et al.,* 1992; Chen and Chen, 2002; Chen *et al.,* 2006; Schubauer-Berigan *et al.,* 2009; Hua *et al.,* 1994; Meijers *et al.,* 1991; Finkelstein 1998; Chen *et al.,* 2012; Liu *et al.,* 2017a; Wang *et al.,* 2020a,b; Wang *et al.,* 2021), coal mining (Meijers *et al.,* 1988; Miller *et al.,* 2007; Miller and MacCalman, 2010; Miyazaki and Une, 2001; Graber *et al.,* 2014a,b; Tomaskova *et al.,* 2012, 2017, 2020, 2022; Kurth *et al.,* 2020), pottery (Winter *et al.,* 1990; McLaughlin *et al.,* 1992; McDonald *et al.,* 1995), ceramic industries (Starzynski *et al.,* 1996), diatomaceous earth (Checkoway *et al.,* 1993, 1996, 1997, 1999; Seixas *et al.,* 1997; Rice *et al.,* 2001), and refractory brick industries (cristobalite exposures) (Dong *et al.,* 1995).

The strongest evidence comes from the worldwide cohort and case-control studies reporting excess lung cancer mortality among workers exposed to respirable crystalline silica in various industrial sectors, confirmed by the 10-cohort pooled case-control analysis by Steenland *et al.* (2001a), the more recent pooled case-control analysis of seven European countries by Cassidy *et al.* (2007), and two national death certificate registry studies (Calvert *et al.,* 2003 in the United States; Pukkala *et al.,* 2005 in Finland).

Recent studies examined lung cancer mortality among coal and non-coal miners (Meijers *et al.,* 1988, 1991; Starzynski *et al.,* 1996; Miyazaki and Une, 2001; Tomaskova *et al.,* 2012, 2017, 2020, 2022; Attfield and Kuempel, 2008; Graber *et al.,* 2014a, 2014b; Kurth *et al.,* 2020; NIOSH, 2019a). These studies also discuss the associations between RCMD and respirable crystalline silica exposures with lung cancer in coal mining populations. Furthermore, these newer studies are consistent with the conclusion of OSHA's final Quantitative Risk Assessment (QRA) (2016a) that respirable crystalline silica is a human carcinogen. MSHA preliminarily concludes that miners, both MNM and coal miners, are at risk of developing lung cancer due to their occupational exposure to respirable crystalline silica.

In addition, based on its review of the literature, MSHA has preliminarily determined that radiographic silicosis is a marker for lung cancer risk. Reducing exposure to levels that lower the silicosis risk would reduce the lung cancer risk to exposed miners (Finkelstein, 1995, 2000; Brown, 2009). MSHA has also found that, based on the available epidemiological and animal data, respirable crystalline silica causes lung cancer (IARC, 2012; RTECS, 2016; ATSDR, 2019). Miners who inhale respirable crystalline silica over time are at increased risk of developing silicosis and lung cancer (Greaves, 2000; Erren *et al.,* 2009; Tomaskova *et al.,* 2017, 2020, 2022).

Toxicity studies provide additional evidence of the carcinogenic potential of respirable crystalline silica. Studies using DNA exposed directly to freshly fractured respirable crystalline silica demonstrate the direct effect respirable crystalline silica had on DNA breakage. Cell culture research has investigated the processes by which respirable crystalline silica disrupt normal gene expression and replication. Studies have demonstrated that chronic inflammatory and fibrotic processes resulting in oxidative and cellular damage may lead to neoplastic changes in the lung (Goldsmith, 1997). In addition, the biologically damaging physical characteristics of respirable crystalline silica and its direct and indirect

genotoxicity (Schins *et al.,* 2002; Borm and Driscoll, 1996) support MSHA's preliminary determination that respirable crystalline silica is an occupational carcinogen.

b. Cancers of Other Sites

In addition to lung cancer, OSHA reviewed studies examining the relationship between silica exposure and cancers at other sites. MSHA notes that OSHA reviewed these mortality studies (*e.g.,* cancer of the larynx and the digestive system, including the stomach and esophagus) and found that studies suggesting a dose-response relationship were too limited in terms of size, study design, or potential for confounding variables to be conclusive. OSHA also pointed to the NIOSH (2002b) silica (respirable crystalline silica) hazard review, which concluded that no association has been established between respirable crystalline silica exposure and excess mortality from cancer at other sites. MSHA has reviewed these studies and agrees with OSHA's conclusion. The following summarizes the studies reviewed with inconclusive findings.

(1) Laryngeal Cancer

Three lung cancer studies (Checkoway *et al.,* 1997; Davis *et al.,* 1983; McDonald *et al.,* 2001) included in OSHA's health literature review suggest an association between respirable crystalline silica exposure and increased mortality from laryngeal cancer. However, a small number of cases were reported and researchers were unable to determine a statistically significant effect. Therefore, there is little evidence of an association based on these studies.

(2) Gastric (Stomach) Cancer

OSHA reviewed several studies in its 2013b health literature review to assess a potential relationship between respirable crystalline silica exposures and stomach cancers. OSHA's literature review noted observations made previously by Cocco *et al.* (1996) and in the NIOSH respirable crystalline silica hazard review (2002b), which found that most epidemiological studies of respirable crystalline silica and stomach cancer did not sufficiently adjust for the effects of confounding factors. In addition, some of these studies were not properly designed to assess a dose-response relationship (*e.g.,* Finkelstein and Verma, 2005; Moshammer and Neuberger, 2004; Selikoff, 1978; Stern *et al.,* 2001) or did not demonstrate a statistically significant dose-response relationship (*e.g.,* Calvert *et al.,* 2003; Tsuda *et al.,* 2001). For these reasons, MSHA determined these studies were inconclusive in the context of this rulemaking.

(3) Esophageal Cancer

OSHA considered several studies that examined the relationship between respirable crystalline silica exposures and esophageal cancer and found that the studies were limited in terms of size, study design, or potential for confounding variables. Three nested case-control studies of Chinese workers demonstrated a dose-response association between increased risk of esophageal cancer mortality and respirable crystalline silica exposure (Pan *et al.,* 1999; Wernli *et al.,* 2006; Yu *et al.,* 2005). Other studies (Tsuda *et al.,* 2001; Xu *et al.,* 1996a) also indicated elevated rates of esophageal cancer mortality with respirable crystalline silica exposure. However, OSHA noted that confounding factors due to other occupational exposures was possible. Additionally, two large national mortality studies in Finland and the United States did not show a positive association between respirable crystalline silica exposure and esophageal cancer mortality (Calvert *et al.,* 2003; Weiderpass *et al.,* 2003). MSHA agrees with OSHA's conclusion that the literature does not support attributing increased esophageal cancer mortality to exposure to respirable crystalline silica.

(4) Other Sites

NIOSH (2002b) conducted a health literature review of the health effects potentially associated with respirable crystalline silica exposure, which identified only infrequent reports of statistically significant excesses of deaths for other cancers. Cancer studies have been reported in the following organs/systems: salivary gland, liver, bone, pancreas, skin, lymphopoietic or hematopoietic, brain, and bladder (see NIOSH, 2002b for full bibliographic references). However, the findings were not observed consistently among epidemiological studies, and NIOSH (2002b) concluded that no association has been established between these cancers and respirable crystalline silica exposure. OSHA concurred with NIOSH that these isolated reports of excess cancer mortality were insufficient to determine the role of respirable crystalline silica exposure.

Overall, OSHA concluded that evidence of an association between silica exposure and cancer at sites other than the lungs is not sufficient. MSHA agrees with OSHA's conclusion.

4. Renal Disease

Renal disease is characterized by the loss of kidney function, and in the case of ESRD, the need for a regular course of long-term dialysis or a kidney transplant. MSHA reviewed a wide variety of longitudinal and mortality epidemiological studies, including case series, case-control, and cohort studies, as well as case reports, and preliminarily concludes that respirable crystalline silica exposure increases the risk of morbidity and/or mortality related to ESRD. However, MSHA notes that the available literature on respirable crystalline silica exposures and renal disease in coal miners is less conclusive than the literature related to MNM miners.

Epidemiological studies have found statistically significant associations between occupational exposure to respirable crystalline silica and chronic renal disease (*e.g.,* Calvert *et al.,* 1997), sub-clinical renal changes, including proteinuria and elevated serum creatinine (*e.g.,* Ng *et al.,* 1992a; Hotz *et al.,* 1995; Rosenman *et al.,* 2000), ESRD morbidity (*e.g.,* Steenland *et al.,* 1990), ESRD mortality (Steenland *et al.,* 2001b, 2002a), and Wegener's granulomatosis (Nuyts *et al.,* 1995) (severe injury to the glomeruli that, if untreated, rapidly leads to renal failure). The pooled analysis conducted by Steenland *et al.* (2002a) is particularly convincing because it involved a large number of workers from three combined cohorts and had well-documented, validated job exposure matrices. Steenland *et al.* (2002a) found a positive and monotonic exposure-response trend for both multiple-cause mortality and underlying cause data. MSHA has preliminarily determined that the underlying data from Steenland *et al.* (2002a) are sufficient to provide useful estimates of risk.

Possible mechanisms suggested for respirable crystalline silica-induced renal disease include: (1) a direct toxic effect on the kidney, (2) a deposition in the kidney of immune complexes (*e.g.,* Immunoglobulin A (IgA), an antibody blood protein) in the kidney following respirable crystalline silica-related pulmonary inflammation, and (3) an autoimmune mechanism (Gregorini *et al.,* 1993; Calvert *et al.,* 1997). Steenland *et al.* (2002a) demonstrated a positive exposure-response relationship between respirable crystalline silica exposure and ESRD mortality.

Overall, MSHA preliminarily determines that respirable crystalline silica exposure in mining increases the risk of renal disease.

5. Autoimmune Disease

Autoimmune diseases occur when the immune system mistakenly attacks healthy tissues within the body, causing inflammation, swelling, pain, and tissue damage. Examples include rheumatoid arthritis (RA), systemic lupus erythematosus (SLE), scleroderma, and systemic sclerosis (SSc). Based on its literature review, MSHA preliminarily concludes that there is a causal association between occupational exposure to respirable crystalline silica and the development of systemic autoimmune diseases in miners. However, no studies are available to date that can be used to model respirable crystalline silica-exposure risk in a formal quantitative risk analysis.

Wallden *et al.* (2020) found that respirable crystalline silica exposure is correlated with an increased risk of developing ulcerative colitis, which increases with duration of exposure (work tenure) and the level of exposure. This effect was especially significant in men. Schmajuk *et al.* (2019) found that RA was significantly associated with coal mining and other non-coal occupations exposed to respirable crystalline silica. Finally, Vihlborg *et al.* (2017) found a significant increased risk of seropositive RA with high exposure (>0.048 mg/m^3) to respirable crystalline silica dust when compared to individuals with no or lower exposure by examining detailed exposure-response relationships across four different respirable crystalline silica dose groups (quartiles): <23 μg/m^3, 24 to 35 μg/m^3, 36 to 47 μg/m^3, and >48 μg/m^3. However, these researchers did not report the risk of sarcoidosis and seropositive RA in relation to respirable crystalline silica exposure using logistic regressions resulting in models that could be used in the risk assessment. In addition, the meta-analysis of 19 published case-control and cohort studies on scleroderma by Rubio-Rivas *et al.* (2017) found statistically significant risks among individuals exposed to respirable crystalline silica, solvents, silicone, breast implants, epoxy resins, pesticides, and welding fumes, but did not provide detailed quantitative exposure information.

C. Conclusion

MSHA preliminarily concludes that occupational exposure to respirable crystalline silica causes silicosis (acute silicosis, accelerated silicosis, simple chronic silicosis, and PMF), NMRD (including COPD), lung cancer, and kidney disease. Each of these effects is exposure-dependent, chronic, irreversible, potentially disabling, and can be fatal. MSHA suspects that respirable crystalline silica exposure is also linked to the development of some autoimmune disorders through inflammation pathways.

The scientific literature (including peer-reviewed medical, toxicological, public health, and other related disciplinary publications) is robust and compelling. It shows that miners exposed to the existing respirable crystalline silica limit of 100 μg/m^3 still have an unacceptable amount of excess risk for developing and dying from diseases related to occupational respirable crystalline silica exposures and still suffer material impairments of health or functional capacity.

VI. Preliminary Risk Analysis Summary

MSHA's preliminary risk analysis (PRA) quantifies risks associated with five specific health outcomes identified in the separate, standalone Health Effects document: silicosis morbidity and mortality, and mortality from NMRD, lung cancer, and ESRD. The standalone document, entitled *Preliminary Risk Analysis* (PRA document), has been placed into the rulemaking docket for the MSHA respirable crystalline silica rulemaking (RIN 1219–AB36, Docket ID no. MSHA–2023–0001) and is available on MSHA's website.

MSHA developed a PRA to support the risk determinations required to set an exposure limit for a toxic substance under the Mine Act. MSHA's PRA quantifies the health risk to miners exposed to respirable crystalline silica under the existing exposure limits for MNM and coal miners, at the proposed PEL of 50 μg/m^3, and at the proposed action level of 25 μg/m^3.

This analysis addresses three questions related to the proposed rule:

(1) whether potential health effects associated with existing exposure conditions constitute material impairment to any miner's health or functional capacity;

(2) whether existing exposure conditions place miners at risk of incurring any material impairment if regularly exposed for the period of their working life; and

(3) whether the proposed rule would reduce those risks.

To answer these questions, MSHA relied on the large body of research on the health effects of respirable crystalline silica and several published, peer-reviewed, quantitative risk assessments that describe the risk of exposed workers to silicosis mortality and morbidity, NMRD mortality, lung cancer mortality, and ESRD mortality. These assessments are based on several studies of occupational cohorts in a variety of industrial sectors. The underlying studies are described in the Health Effects document and are summarized in Section V. Health Effects Summary of this preamble.

This summary highlights the main findings from the PRA, briefly describes how they were derived, and directs readers interested in more detailed information to corresponding sections of the standalone PRA document.

A. Summary of MSHA's Preliminary Risk Analysis Process and Methods

MSHA evaluated the literature and selected an exposure-response model for each of the five health endpoints—silicosis morbidity, silicosis mortality, NMRD mortality, lung cancer mortality, and ESRD mortality. The selected exposure-response models were used to estimate lifetime excess risks and lifetime excess cases among the current population of MNM and coal miners based on real exposure conditions, as indicated by the samples in the compliance sampling datasets.

MSHA's PRA is largely based on the methodology and findings from a peer-reviewed January 2013 OSHA preliminary quantitative risk assessment (PQRA) and associated analysis of health effects in connection with OSHA's promulgation of a rule setting PELs for workplace exposure to respirable crystalline silica. OSHA's PQRA presented quantitative relationships between respirable crystalline silica exposure and multiple health endpoints. Following multiple legal challenges, the U.S. Court of Appeals for the D.C. Circuit rejected challenges to OSHA's risk assessment methodology and its findings on different health risks. *N. Am.'s Bldg. Trades Unions* v. *OSHA,* 878 F.3d 271, 283–89 (D.C. Cir. 2017).

MSHA's PRA presents detailed quantitative analyses of health risks over a range of exposure concentrations that have been observed in MNM and coal mines. MSHA applied exposure-response models to estimate the respirable crystalline silica-related risk of material impairment of health or functional capacity of miners exposed to respirable crystalline silica at three levels—(1) the existing standards, (2) the proposed PEL, and (3) the proposed action level. As in past MSHA rulemakings, MSHA estimated and compared lifetime excess risks associated with exposures at the existing and proposed PEL (and at the proposed action level) over a miner's full working life of 45 years.

MSHA's PRA is also based on a compilation of miner exposure data to respirable crystalline silica. For the MNM sector, MSHA evaluated 57,769 valid respirable dust samples collected between January 2005 and December 2019; and for the coal sector, MSHA evaluated 63,127 valid respirable dust samples collected between August 2016 and July 2021. The compiled data set characterizes miners' exposures to respirable crystalline silica in various locations (*e.g.,* underground, surface), occupations (*e.g.,* drillers, underground miners, equipment operators), and commodities (*e.g.,* metal, nonmetal, stone, crushed limestone, sand and gravel, and coal). MSHA enforcement sampling indicates a wide range of exposure concentrations. These include exposures from below the proposed action level (25 μg/m³) to above the existing standards (100 μg/m³ in MNM standards, 100 μg/m³ MRE in coal standards, which is approximately 85.7 μg/m³ ISO).[18]

The primary results of the PRA are the calculated number of deaths and illnesses avoided assuming full compliance after implementation of MSHA's proposed rule. These calculations were performed for non-fatal silicosis illnesses (morbidity) and for deaths (mortality) due to silicosis, lung cancer, NMRD, and ESRD. For each health outcome, the reduced number of illnesses or deaths is calculated as the difference between (a) the number of illnesses and deaths currently occurring in the industry, assuming mines fully comply with the existing standards (100 μg/m³ for MNM and 85.7 μg/m³ ISO for coal) and (b) the number of deaths and illnesses expected to occur following implementation of the proposed rule, which includes a proposed PEL of 50 μg/m³ for a full shift exposure, calculated as an 8-hour TWA.

Risks and cases were estimated under two scenarios: (a) a Baseline scenario where all exposures were capped at 100 μg/m³ for MNM miners and at 85.7 μg/m³ for coal miners, and (b) a proposed 50 μg/m³ scenario where all risks were capped at the proposed PEL of 50 μg/m³ for both MNM and coal miners. The difference between the two scenarios yields the estimated reduction in lifetime excess risks and in lifetime excess cases due to the proposed PEL.

To calculate risks, MSHA grouped MNM miners into the following exposure intervals: ≤25, >25 to ≤50, >50 to ≤100, >100 to ≤250, >250 to ≤500, and >500 μg/m³. MSHA grouped coal miners into the following exposure intervals: ≤25, >25 to ≤50, >50 to ≤85.7, >85.7 to ≤100, >100 to ≤250, >250 to ≤500, and >500 μg/m³. MSHA calculated the median of all exposure samples in each exposure interval and assumed the population of miners is distributed across the exposure intervals in proportion to the number of exposure samples from the compliance dataset in each interval. Then, miners were assumed to encounter constant exposure at the median value of their assigned exposure interval. MSHA adjusted the annual cumulative exposure by a full-time equivalency (FTE) factor to account for the fact that miners may experience more or less than 2,000 hours of exposure per year. MSHA calculated the FTE adjustment factor as the weighted average of the production employee FTE ratio (0.99 for MNM and 1.14 for coal) and the contract miner FTE ratio (0.59 for MNM and 0.64 for coal), where the weights are the number of miners (150,928 for MNM production employees, 60,275 for MNM contract miners, 51,573 for coal production employees, and 22,003 for coal contract miners). For example, the weighted average FTE ratio for MNM is $(0.987 \times 150{,}928 + 0.591 \times 60{,}275)/(150{,}928 + 60{,}275) = 0.87$ and is $(1.139 \times 51{,}573 + 0.636 \times 22{,}003)/(51{,}573 + 22{,}003) = 0.99$ for coal.

MSHA calculated excess risk, which refers to the additional risk of disease and death attributable to exposure to respirable crystalline silica. For silicosis morbidity, MSHA used an exposure-response model that directly yields the accumulated or lifetime excess risk of silicosis morbidity, assuming there is no background rate[19] of silicosis in an unexposed (*i.e.,* non-miner) group. For the four mortality endpoints (silicosis mortality, lung cancer mortality, NMRD mortality, and ESRD mortality), MSHA used cohort life tables to calculate excess risks, assuming all miners begin working at age 21, retire at the end of age 65, and do not live past age 80. From the life tables, MSHA acquired the lifetime mortality risk by summing the miner cohort's mortality risks in each year from age 21 through age 80. Life tables were also constructed for unexposed (*i.e.,* non-miner) groups assumed to die from a given disease at typical rates for the U.S. male population. MSHA used 2018 data for all males in the U.S. (published by the National Center for Health Statistics, 2020b) to estimate (a) the disease-specific mortality rates among unexposed males and (b) the all-cause mortality rates among both groups (exposed miners and unexposed non-miners).

For a given scenario (either Baseline or Proposed 50 μg/m³), MSHA constructed life tables in the manner described above, both for a miner cohort exposed to respirable crystalline silica and for an unexposed non-miner cohort. MSHA calculated excess risk of the disease as the difference between the two cohorts' disease-specific mortality risk (due to silicosis, lung cancer, NMRD, or ESRD). MSHA determined the lifetime excess cases by multiplying the lifetime excess risk by the number of exposed miner FTEs (including both production employee FTEs and contract miner FTEs). Risks and cases were calculated separately for each exposure interval listed above. Then, the lifetime excess cases were aggregated across all exposure intervals. MSHA calculated the final lifetime excess risks per 1,000 miners in the full population by dividing the total number of lifetime excess cases by the total number of miners in the population (exposed at any interval). Finally, to estimate the risk reductions and avoided cases of illness due to the proposed PEL, MSHA compared the lifetime excess risks and lifetime excess cases across the two scenarios (Baseline and Proposed 50 μg/m³).

B. Overview of Epidemiologic Studies

MSHA reviewed extensive research on the health effects of respirable crystalline silica and several quantitative risk assessments published in the peer-reviewed scientific literature

[18] As discussed in the PRA, the existing PEL for coal is 100 μg/m³ MRE, measured as a full-shift time-weighted average (TWA). To calculate risks consistently for both coal and MNM miners, the PRA converts the MRE full-shift TWA concentrations experienced by coal miners to ISO 8-hour TWA concentrations. (See Section 4 of the PRA document for a full explanation.) The equation used to convert MRE full-shift TWA concentrations into ISO 8-hour TWA concentrations is:

ISO 8-hour TWA concentration = (MRE TWA) × (original sampling time)/(480 minutes) × 0.857

Exposures at TWA 100 μg/m³ MRE and SWA 85.7 μg/m³ ISO are only equivalent when the sampling duration is 480 minutes (eight hours). However, for the sake of simplicity and for comparison purposes, the risk analysis approximates exposures at the existing coal exposure limit of 100 MRE μg/m³ as 85.7 μg/m³ ISO. Thus, ISO concentration values (measured as an 8-hour TWA) were used as the exposure metric when (a) calculating risk under the assumption of full compliance with the existing standards and (b) calculating risk under the assumption that no exposure exceeds the proposed PEL of 50 μg/m³. To simulate compliance among coal miners at the existing exposure limit, exposures were capped at 85.7 μg/m³ measured as an ISO 8-hour TWA.

[19] Here, the ''background'' risk (or rate) refers to the risk of disease that the exposed person would have experienced in the absence of exposure to respirable crystalline silica. These background morbidity and mortality rates are measured using the disease-specific rates among the general population, which is not exposed to respirable crystalline silica.

regarding occupational exposure risks of illness and death from silicosis, NMRD, lung cancer, and ESRD. The Health Effects document describes the specific studies reviewed by MSHA. Of the many studies evaluated, MSHA believes that the 13 studies used by OSHA (2013b) to estimate risks provide reliable estimates of the disease risk posed by miners' exposure to respirable crystalline silica. These studies are summarized in Table VI–1.

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Table VI-1. Epidemiologic Studies of Miner Exposures to Respirable Crystalline Silica Reviewed in MSHA's PRA

Study	Population Studied	Exposure Measure	Health Risks Modeled					
			Morbidity		Mortality			
			Silicosis	RPP[a]	Silicosis	NMRD	Lung Cancer	ESRD
1. Attfield and Costello (2004)	Vermont granite workers	Job/exposure matrix					X	
2. Buchanan *et al.* (2003)	Scottish coal miners	Cumulative dust and respirable crystalline silica exposure	X	X				
3. Chen *et al.* (2001)	Chinese tin miners	Cumulative dust exposure, job/exposure matrix	X					
4. Chen *et al.* (2005)	Chinese tin, tungsten miners and pottery workers	Cumulative dust exposure, job/exposure matrix	X					
5. Hnizdo and Sluis-Cremer (1993b)	White South African gold miners	Job/exposure matrix, tenure	X					
6. Hughes *et al.* (2001)	North American industrial sand workers	Cumulative dust exposure, job/exposure matrix					X	
7. Mannetje *et al.* (2002b), ToxaChemica International Inc. (2004)	6 cohorts from U.S., Finnish, and Australian miners	Cumulative dust exposure/job/ exposure matrices			X			
8. Miller and MacCalman (2010)	British coal miners	Tenure, cumulative dust exposure					X	
9. Park *et al.* (2002)	California diatomaceous earth workers	Cumulative dust exposure; cristobalite			X	X		
10. Rice *et al.* (2001)	California diatomaceous earth workers	Cumulative dust exposure; cristobalite					X	
11. Steenland and Brown (1995b)	South Dakota gold miners	Median respirable crystalline silica exposure, job/exposure matrix	X					

Table VI-1. Epidemiologic Studies of Miner Exposures to Respirable Crystalline Silica Reviewed in MSHA's PRA

Study	Population Studied	Exposure Measure	Health Risks Modeled					
			Morbidity		Mortality			
			Silicosis	RPP[a]	Silicosis	NMRD	Lung Cancer	ESRD
12. Steenland *et al.* (2001a), ToxaChemica, International Inc. (2004)	10 cohorts: U.S. Diatomaceous earth workers, Finnish and U.S. granite, U.S. industrial sand, Chinese pottery, tin, and tungsten miners, South African, U.S., and Australian gold miners	Cumulative dust exposure					X	
13. Steenland *et al.* (2002a)	3 cohorts: U.S. gold miners, industrial sand workers, and granite workers	Cumulative dust exposure, job/exposure matrix						X

a. MSHA used the Buchanan *et al* study to assess exposure rate effects on the risks of accelerated silicosis (more common in MNM miners) and rapidly progressive pneumoconiosis (RPP, primarily seen in coal miners, but also reported in silica flour packers). Miners exposed to respirable crystalline silica at variable intensities (i.e., high concentrations and low concentrations) may develop rapid progression of disease, referred to as RPP. It is defined as the development of PMF and/or an increase in small opacity profusion greater than one subcategory over a 5-year period (Antao *et al.*, 2005).

Of these 13 studies, OSHA selected one per health endpoint for final modeling and estimation of lifetime excess risk and cases. Combining the five selected studies with the observed exposure data yields estimates of actual lifetime excess risks and lifetime excess cases among worker populations based on real exposure conditions. Table VI–2 presents the 13 studies from OSHA's PQRA, which MSHA has also considered. MSHA evaluated the evidence of OSHA's analysis of the 13 studies and the accompanying risks associated with exposure at 25, 50, 100, 250, and 500 μg/m^3. Thorough evaluation has led MSHA to determine that the studies OSHA selected still provide the best available epidemiological models. However, MSHA utilized the Miller and MacCalman (2010) study to estimate risks. This study was published after OSHA completed much of its modeling for their 2013 PRA (OSHA, 2013b). The study was included in OSHA's health effects assessment and its PQRA. The following lists the study used by MSHA for each health endpoint:

Silicosis morbidity: Buchanan *et al.* (2003);

Silicosis mortality: Mannetje *et al.* (2002b);

NMRD mortality: Park *et al.* (2002);

Lung cancer mortality: Miller and MacCalman (2010); and

ESRD mortality: Steenland *et al.* (2002a).

MSHA developed its risk estimates based on recent mortality data and using certain assumptions that differed from those used by OSHA, as explained in the standalone PRA document. Examples of these MSHA assumptions include a lifetime that ends at age 80, updated background mortality data and all-cause mortality, miner population sizes, and miner-specific full-time equivalents (FTEs).[20]

MSHA's modeling has been done using life tables, in a manner consistent with OSHA's PQRA. In general, the life table is a technique that allows estimation of excess risk of disease-specific mortality while factoring in the probability of surviving to a particular age assuming no exposure to respirable crystalline silica. This analysis accounts for competing causes of death, background mortality rates of the disease, and the effect of the accumulation of risk due to elevated mortality rates in each year of a working life. For each cause of mortality, the selected study was used in the life table analysis to compute the increase in miners' disease-specific mortality rates attributable to respirable crystalline silica exposure.

MSHA uses cumulative exposure (*i.e.,* cumulative dose) to characterize the total exposure over a 45-year working life. Cumulative exposure is defined as the product of exposure duration and exposure intensity (*i.e.,* exposure level). Cumulative exposure is the predictor variable in the selected exposure-response models.

[20] FTEs were used to adjust the cumulative exposure over a year based on the average number of hours that miners work.

Table VI-2. Summary of Exposure Response Models in Studies Considered in MSHA's PRA, Based on OSHA's 13 PQRA Models*

	Study	Cohort	Exposure Lag (years)[a]	Model Parameter (Standard Error (SE))
Morbidity				
Silicosis	Chest X-ray category of 2/1 or greater (Buchanan *et al.*, 2003)*	British coal miners	No lag	Prob(2/1+) = 1/ (1+exp-(-4.83 + 0.443*Cum. $Quartz_{<2}$ + 01.323 * $Cum.Exp_{>2\ mg/cubic\ m}$).[b]
	Silicosis mortality and/or X-ray of 1/1 or greater (Steenland and Brown, 1995b)	U.S. gold miners	No lag	Life table approach to estimate silicosis risk based on the silicosis rates that are age- and calendar-time-adjusted, from Table 2 (page 1374) of Steenland and Brown (1995b). Exposure to crystalline silica is assumed to begin at age 20 through age 65.[c]
	Chest X-ray category of 1/1 or greater (Hnizdo and Sluis-Cremer, 1993b)	South African gold miners	No lag	Cumulative Risk (CR) = 1 – {1/[1 + exp(2.439/.2199)*$CDE^{1/.2199}$]}.[d]
	Chest X-ray category of 1 or greater (Chen *et al.*, 2001)	Chinese tin miners	No lag	CR = 1-exp(-0.0076*E)$^{2.23}$ where E is cumulative exposure to total dust.[e]
	Chest X-ray category of 1 or greater (Chen *et al.*, 2005)	Chinese tin miners	No lag	Estimated from Figure 2B in Chen *et al.* (2005) showing cumulative risk vs. cumulative exposure to respirable crystalline silica. Average age at onset was 47.9 years for tin miners.
	Chest X-ray category of 1 or greater (Chen *et al.*, 2005)	Chinese tungsten miners	No lag	Estimated from Figure 2B in Chen *et al.* (2005) showing cumulative risk vs. cumulative exposure to respirable crystalline silica. Average age at onset was 41.8 years for tungsten miners.
	Chest X-ray category of 1 or greater (Chen *et al.*, 2005)	Chinese pottery workers	No lag	Estimated from Figure 2B in Chen *et al.* (2005) showing cumulative risk vs. cumulative exposure to respirable crystalline silica. Average age at onset was 52.5 years for pottery workers.
Mortality				
Silicosis	Mannetje *et al.* 2002b; ToxaChemica International, Inc. 2004*	Pooled analysis for silicosis	No lag	Estimates derived from rate ratios based on the categorical model after accounting for exposure measurement uncertainty, from Table 7, page 40 of ToxaChemica, International Inc. (2004). Absolute risk calculated as 1 – exp(-Σtime*rate), where rate is the rate ratio for a given cumulative exposure times a base rate of 4.7E-5. (OSHA, 2013b, page 352).
NMRD	Park *et al.*, 2002*	California diatomaceous earth workers	No lag	Linear relative rate model: RR=1+(0.5469*E) where E is cumulative respirable crystalline silica exposure in mg/m^3.[f]
Lung Cancer				
	Steenland *et al.*, 2001a;	Ten pooled cohorts[g]	15	Range based on three models log-linear model with log cumulative exposure

Table VI-2. Summary of Exposure Response Models in Studies Considered in MSHA's PRA, Based on OSHA's 13 PQRA Models*

	Study	Cohort	Exposure Lag (years)[a]	Model Parameter (Standard Error (SE))
	ToxaChemica, Inc. 2004			(mg/m^3-years; see Table II-2, OSHA 2013b, page 290): 1) Log-linear model: $\beta = 0.60$ (0.015) (Model with log cumulative exposure (mg/m^3-days + 1)); 2) Linear model: $\beta = 0.074950$ (0.024121) (Model with log cumulative exposure (mg/m^3-days + 1)); and 3) Linear spline model: $\beta_1 = 0.16498$ (0.0653) and $\beta_2 = -0.1493$ (0.0657) Model with cumulative exposure (mg/m^3-years) and 95% confidence interval calculated as follows (where CE = cumulative exposure in mg/m^3-years and SE is standard error of the parameter estimate in parentheses): For $CE \leq 2.19$: $1 + [(\beta_1 \pm (1.96*SE_1)) *CE]$ For $CE > 2.19$: $1 + [(\beta_1 * CE) + (\beta_2 * (CE-2.19))] \pm 1.96 * SQRT[(CE^2 * SE_1^2) + ((CE-2.19)^2 *SE_2^2) + (2*CE*(CE-3.29)*-0.00429)]$.[h]
	Rice *et al.*, 2001	California diatomaceous earth workers	10	Linear relative risk model: $\beta = 0.1441*E$ Model with cumulative respirable crystalline silica exposure E =mg/m^3-years (Table II-2, OSHA 2013b, page 290).[i]
	Attfield and Costello, 2004	U.S. granite workers	15	Log-linear relative risk model: $\beta = \exp(0.19*E)$ where E is cumulative respirable crystalline silica exposure in mg/m^3-years Table II-2 (OSHA 2013b, page 290).[j]
	Hughes *et al.*, 2001	North American industrial sand workers	15	Log-linear relative risk model: $\beta = 0.13 *E$, SE = 0.074; where E is cumulative respirable crystalline silica exposure in mg/m^3-years (Table II-2, OSHA 2013b, page 290).[k]
	Miller and MacCalman, 2010*	British coal miners	15	Log-linear relative risk model: B = 0.0524 * E, where E is cumulative respirable crystalline silica exposure in mg/m^3-years, SE = 0.0188, life table analysis (Table II-2, OSHA 2013b, page 290).[h]
ESRD	Steenland *et al.*, 2002a*	Three cohorts	No lag	Log-linear model: R = exp(0.269(lnE)) where E is cumulative respirable crystalline silica exposure in mg/m^3-days, life table analysis.[l]

Notes:

* Indicates the study MSHA selected for modeling.

a. The exposure-response models may include an exposure lag period that accounts for disease latency (NIOSH 2019a). Researchers will typically model different lag periods to determine a model's best fit. An exposure lag could potentially improve the model as there is often a delay in the development of disease, such as silicosis and lung cancer, following exposure (OSHA 2013b).

b. Quartz is cumulative respirable silica exposure in ghm^{-3} (i.e., gram-hours/m^3) with one year of work = 2000 hours (250 days per year x 8 hours per day). Exposure to crystalline silica is assumed to begin at age 20 through age 65. Age of cohort at follow-up was between 50 and 74 years (OSHA 2013b, page 335).

Table VI-2. Summary of Exposure Response Models in Studies Considered in MSHA's PRA, Based on OSHA's 13 PQRA Models*

	Study	Cohort	Exposure Lag (years)[a]	Model Parameter (Standard Error (SE))

c. Was used by OSHA in its life table approach.
d. CDE = cumulative respirable dust exposure in mg/m^3-years, assumed quartz content of respirable dust in 30%. Average age of cohort at onset was 55.9 years (range 38-74 years).
e. Respirable crystalline silica reported by Chen *et al.* (2001) to be 3.6 % of total dust. Average age at onset was 48.3 years.
f. Was used by OSHA in its life table approach.
g. 10 Cohort studies: US diatomaceous earth (Checkoway *et al.*, 1997), South Africa gold (Hnizdo and Sluis-Cremer, 1991; Hnizdo *et al.*, 1997), US gold (Steenland and Brown, 1995a), Australian gold (de Klerk and Musk, 1998), US granite (Costello and Graham, 1988), Finnish granite (Koskela *et al.*, 1994), US industrial sand (Steenland *et al.*, 2001b), Chinese tungsten (Chen *et al.*, 1992), Chinese pottery (Chen *et al.*, 1992), Chinese tin (Chen *et al.*, 1992).
h. Was used by OSHA in its life table approach.
i. Was used by OSHA in its life table approach. Standard error not reported; upper and lower confidence limit on beta estimated from confidence interval of risk estimate reported in Rice e*t al.*, 2001. (OSHA 2013b, Table II-2, page 290).
j. Was used by OSHA in its life table approach. Standard error not reported, upper and lower confidence limit on beta estimated from confidence interval of risk estimate reported in Attfield and Costello, 2004 (OSHA 2013b, Table II-2, page 290).
k. Was used by OSHA in its life table approach. Standard error of the coefficient was estimated from the p-value for trend (Rice *et al.*, 2001).
l. Was used by OSHA in its life table approach.

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For each health endpoint, MSHA generated two sets of risk estimates—one representing a scenario of full compliance with the existing standards (herein referred to as the ''Baseline'' scenario) and another representing a scenario wherein no samples exceed the proposed PEL (herein referred to as the ''Proposed 50 μg/m^3'' scenario). In the Baseline scenario, MNM miners in the >100–250, >250–500, and >500 μg/m^3 groups were assigned exposure intensities of 100 μg/m^3 ISO. Coal miners in the 85.7–100, >100–250, >250–500, and >500 μg/m^3 groups were assigned exposure intensities of 85.7 μg/m^3 ISO, calculated as an 8-hour TWA. Exposure intensities were not changed for miners with lower exposure concentrations, because their exposures were considered compliant with the existing standards. A similar procedure was used for the Proposed 50 μg/m^3 scenario, except that each miner group whose exposure exceeded the proposed PEL was assigned a new exposure of 50 μg/m^3 ISO (for both MNM and coal). This process—of creating an exposure profile based on actual exposure data and modifying it based on the existing standards or the proposed PEL—allowed MSHA to estimate real exposure conditions that miners would encounter under each scenario, thereby enabling estimates of the actual excess risks the current population of miners would experience under each scenario (Baseline and Proposed 50 μg/m^3).

For purposes of calculating risk in the PRA, both for MNM and coal miners, MSHA estimated excess risks by using the concentration collected over the full shift and calculating it as a full-shift, 8-hour TWA expressed in ISO standards. This metric of exposure intensity—the 8-hour TWA concentration of respirable crystalline silica in ISO standards—was used consistently across all sets of estimates (both MNM and coal sectors, and both the Baseline and Proposed 50 μg/m^3 scenarios), thereby facilitating meaningful comparison. MSHA acknowledges that this metric does not correspond to the manner in which coal exposure concentrations are calculated for purposes of evaluating compliance under the existing standard. Nonetheless, MSHA believes that a full-shift, 8-hour TWA concentration accurately represents risks to miners and thus is the most appropriate cumulative exposure metric for computing risk given that FTEs were used to scale exposure durations relative to the assumption of 250 8-hour workdays per year.

C. Summary of Studies Selected for Modeling

1. Silicosis Morbidity

Due to the long latency periods associated with chronic silicosis, OSHA's respirable crystalline silica standard relied on the subset of studies that were able to contact and evaluate many workers through retirement. MSHA agrees that relying on studies that included retired workers comes closest to characterizing lifetime risk of silicosis morbidity.

The health endpoint of interest in these studies was the appearance of opacities on chest radiographs indicative of pulmonary pneumoconiosis (a group of lung diseases caused by the lung's reaction to inhaled dusts). The most reliable estimates of silicosis morbidity, as detected by chest X-rays, come from the studies that evaluated those X-rays over time, included radiographic evaluation of workers after they left employment, and derived cumulative or lifetime estimates of silicosis disease risk.

To describe the presence and severity of pneumoconiosis, including silicosis, the International Labour Organization (ILO) developed a standardized system to classify lung opacities identified on chest radiographs (X-rays) (ILO, 1980, 2002, 2011, 2022). The ILO system

grades the size, shape, and profusion of opacities. Although silicosis is defined and categorized based on chest X-ray, the X-ray is an imprecise tool for detecting pulmonary pneumoconiosis (Craighead and Vallyathan, 1980; Hnizdo *et al.,* 1993; Rosenman *et al.,* 1997; Cohen and Velho, 2002). Hnizdo *et al.* (1993) recommended that an ILO category 0/1 (or greater) should be considered indicative of silicosis among workers exposed to high respirable crystalline silica concentrations. They noted that the sensitivity of the chest X-ray as a screening test increases with disease severity and to maintain high specificity, category 1/0 (or 1/1) chest X-rays should be considered as a positive diagnosis of silicosis for miners who work in low dust occupations (Hnizdo *et al.,* 1993). MSHA, consistent with NIOSH's use of chest X-rays in their occupational respiratory disease surveillance program (NIOSH 2014b), agrees that a small opacity profusion score of 1/0 is consistent with chronic silicosis stage 1. Most of the studies reviewed by MSHA considered a finding consistent with an ILO category of 1/1 or greater to be a positive diagnosis of silicosis, although some also considered an X-ray classification of 1/0 or 0/1 to be positive. The low sensitivity of chest radiography to detect minimal silicosis suggests that risk estimates derived from radiographic evidence likely underestimate the true risk of this disease (Craighead and Vallyathan, 1980; Hnizdo *et al.,* 1993; Rosenman *et al.,* 1997; Cohen and Velho, 2002).

OSHA summarized the Miller *et al.* (1995, 1998) and Buchanan *et al.* (2003) papers in their final respirable crystalline silica standard in 2016 (OSHA 2016a, 81 FR 16286, 16316). These researchers reported on a 1991 follow-up study of 547 survivors of a 1,416-member cohort of Scottish coal workers from a single mine. These men had all worked in the mine during the period between early 1971 and mid-1976, during which time they had experienced ''unusually high concentrations of freshly cut quartz in mixed coal mine dust.'' The population's exposures to quartz dust had been measured in unique detail for a considerable proportion of the men's working lives (OSHA 2013b, page 333).

The 1,416 men had previous chest X-rays dating from before, during, or just after this high respirable crystalline silica exposure period. Of these 1,416 men, 384 were identified as having died by 1990/1991. Of the 1,032 remaining men, 156 were untraced, and, of the 876 who were traced and replied, 711 agreed to participate in the study. Of these, the total number of miners who were surveyed was 551. Four of these were omitted, two because of a lack of an available chest X-ray. The 547 surviving miners (age range: 29–85 years, average = 59 years) were interviewed and received their follow-up chest X-rays between November 1990 and April 1991. The interviews consisted of questions on current and past smoking habits and occupational history since leaving the coal mine, which closed in 1981. They were also asked about respiratory symptoms and were given a spirometry test (OSHA 2013b, pages 333–334).

Exposure characterization was based on extensive respirable dust sampling; samples were analyzed for quartz content by IR spectroscopy. Between 1969 and 1977, two coal seams were mined. One had produced quarterly average concentrations of respirable crystalline silica much less than 1,000 μg/m^3 (only 10 percent exceeded 300 μg/m^3). The other more unusual seam (mined between 1971 and 1976) lay in sandstone strata and generated respirable crystalline silica levels such that quarterly average exposures exceeded 1,000 μg/m^3 (10 percent of the quarterly measurements were over 10,000 μg/m^3). Thus, this cohort study allowed evaluation of the effects of both higher and lower respirable crystalline silica concentrations and exposure-rate effects on the development of silicosis (OSHA 2013b, page 334).

Three physicians read each chest film taken during the current survey as well as films from the surveys conducted in 1974 and 1978. Films from an earlier 1970 survey were read only if no films were available from the subsequent two surveys. Silicosis cases were identified if the median classification of the three readers indicated an ILO category of 1/1 or greater (Miller *et al,* 1995, page 24), plus a progression from the earlier reading. Of the 547 men, 203 (38 percent) showed progression of at least 1 ILO category from the 1970s' surveys to the 1990–91 survey; in 128 of these (24 percent) there was progression of 2 or more ILO categories. In the 1970s' surveys, 504 men had normal chest X-rays; of these 120 (24 percent) acquired an abnormal X-ray consistent with ILO category 1/0 or greater at the follow-up. Of the 36 men whose X-rays were consistent with ILO category 1/0 or greater in the 1970s' surveys, 27 (75 percent) exhibited further progression at the 1990/1991 follow-up. Only one subject showed a regression from any earlier reading, and that was slight, from 1/0 to 0/1. The earlier Miller *et al.* (1995) report presented results for cases classified as having X-ray films consistent with either 1/0+ and 2/1+ degree of profusion; the Miller *et al.* (1998) analysis and the Buchanan *et al.* (2003) re-analyses emphasized the results from cases having X-rays classified as 2/1+ (OSHA 2013b, page 334).

MSHA modeled the exposure-response relationship by using cumulative exposure expressed as gram/m^3-hours, assuming 2,000 work hours per year and a 45-year working life (after adjusting for full-time equivalents, including production employees and contract workers). MSHA estimated risk at the existing standard assuming cumulative exposure to 100 μg/m^3 ISO for MNM miners and 85.7 μg/m^3 ISO (100 μg/m^3 MRE) for coal miners. Respirable crystalline silica exposures were calculated by commodity, and median exposure values were used within a variety of exposure intervals. Risks were computed using a life table methodology which iteratively updated the survival, risk, and mortality rates each year based on the results of the preceding year. Covariates in the regression included smoking, age, amount of coal dust, and percent of quartz in the coal dust during various previous survey periods.

Both Miller *et al.* papers (1995, 1998) presented the results of numerous regression models, and they compared the results of the partial regression coefficients using Z statistics of the coefficient divided by the standard error. Also presented were the residual deviances of the models and the residual degrees of freedom. In the introduction to the results section, Miller *et al.* (1995) stated that, ''in none of the models fitted was there a significant effect of smoking habit (current, ex-smoker, and never smoker), nor was there any evidence of any difference between smoking groups in their relationship of response with age.'' They therefore presented the results of the regression analyses without terms for smoking effects (*i.e.,* without including smoking effects as a variable in the final regression analysis, because they found that smoking did not affect the modeling results). The logistic regression models developed by Miller *et al.* (1995) included terms for cumulative exposure and age. In their later publication, Miller *et al.* (1998) presented models similar to their 1995 report, but without the age variable. Their logistic regression model A from Table 7 of their report (page 56) included only an intercept (−4.32) and the respirable crystalline silica (quartz) cumulative exposure variable (0.416). They estimated that respirable crystalline silica exposure at an average

concentration of 100 μg/m³ for 15 years (2.6 gram/m³-hr assuming 1,750 hours worked per year) would result in an increased risk of silicosis (ILO > 2/1) of 5 percent (OSHA 2013b, page 334).

OSHA had a high degree of confidence in the estimates of silicosis morbidity risk from this Scotland coal mine study. This was mainly because of highly detailed and extensive exposure measurements, radiographic records, and detailed analyses of high exposure-rate effects. However, in another paper, Soutar *et al.* (2004) noted that: ''If the effects of silica vary according to the conditions of exposure, these risks are probably towards the high end of the risk spectrum, since the silica was freshly fractured from massive sandstone, and not derived from dirt bands where the quartz grains are aged and accompanied by clay minerals'' (OSHA 2013b, page 336). MSHA has reviewed and agrees with OSHA's conclusion.

Buchanan *et al.* (2003) provided an analysis and risk estimates only for cases having X-ray films consistent with ILO category 2/1+ extent of profusion of opacities, after adjusting for the disproportionately severe effect of exposure to high respirable crystalline silica concentrations. Estimating the risk of 1/0+ profusions from the Buchanan *et al.* (2003) or the earlier Miller *et al.* (1995, 1998) publications can only be roughly approximated because of the summary information included. Table 4 of Miller *et al.* (1998) (page 55) presents a cross-tabulation of radiograph progression, using the 12-point ILO scale, from the last baseline exam to the 1990/1991 follow-up visit for the 547 men at the Scottish coal mine. From this table, among miners having both early X-ray films and follow-up films, 44 men had progressed to 2/1+ by the last follow-up and an additional 105 men had experienced the onset of silicosis (*i.e.,* X-ray films were classified as 1/0, 1/1, or 1/2). Thus, by the time of the follow-up, there were three times more miners with silicosis consistent with ILO category 1 than there were miners with a category 2+ level of severity ((105 + 44)/44 = 3.38). This suggests that the Buchanan *et al.* (2003) model, which reflects the risk of progressing to ILO category 2+, underestimates the risk of acquiring radiological silicosis by about three-fold in this population (OSHA 2013b, page 336). This type of analysis shows that the risk of developing silicosis estimated from the Buchanan *et al.* (2003) and Miller *et al.* (1998) studies is of the same magnitude as the risks reported by Hnizdo and Sluis-Cremer (1993b) (OSHA 2013b, page 338).

MSHA estimated silicosis risk by using the Buchanan *et al.* (2003) model that predicted the lifetime probability of developing silicosis at the 2/1+ category based on cumulative respirable crystalline silica exposures. As discussed previously, MSHA applied the Buchanan *et al.* (2003) model, assuming that miners are exposed for 45 years of working life extending from age 21 through age 65, using a life table approach. Buchanan *et al.* provides an exposure-response model using cumulative exposure in mg/m³-hours as the predictor variable and lifetime risk of silicosis as the outcome variable. MSHA assumed 45 years of exposure, each such year having a duration of 2,000 work hours, scaled by a weighted average FTE ratio that accounts for the average annual hours worked by production employees and contract miners.

2. Accelerated Silicosis and Rapidly Progressive Pneumoconiosis (RPP) Study

OSHA concluded in their risk assessment, and MSHA agrees, that there is little evidence of a dose-rate effect at respirable crystalline silica concentrations in the exposure range of 25 μg/m³ to 500 μg/m³ (81 FR 16286, 16396). OSHA noted that the risk estimates derived from the Buchanan *et al.* (2003) study were not appreciably different from those derived from the other studies of silicosis morbidity (see OSHA 2016a, 81 FR 16286, 16386; Table VI–1. *Summary of Lifetime or Cumulative Risk Estimates for Crystalline Silica*). However, OSHA also concluded that some uncertainty related to dose-rate effects exists at concentrations far higher than the exposure range of interest. OSHA stated that it is possible for such a dose-rate effect to impact the results if not properly addressed in study populations with high concentration exposures. OSHA used the model from the Buchanan *et al.* (2003) study in its silicosis morbidity risk assessment to account for possible dose-rate effects at high average concentrations (OSHA 2016a, 81 FR 16286, 16396 OSHA 2013b, pages 335–342). MSHA has reviewed and agrees with OSHA's conclusions.

NIOSH stated in its post-hearing brief to OSHA, that a ''detailed examination of dose rate would require extensive and real time exposure history which does not exist for silica (or almost any other agent)'' (81 FR 16285, 16375). Similarly, Dr. Kenneth Crump, a researcher from Louisiana Tech University Foundation who served on OSHA's peer review panel for the Review of Health Effects Literature and Preliminary Quantitative Risk Assessment, wrote to OSHA that, ''[h]aving noted that there is evidence for a dose rate effect for silicosis, it may be difficult to account for it quantitatively. The data are likely to be limited by uncertainty in exposures at earlier times, which were likely to be higher'' (OSHA 2016a, 81 FR 16286, 16375). OSHA agreed with the conclusions of NIOSH and Dr. Crump. OSHA believed that it used the best available evidence to estimate risks of silicosis morbidity and sufficiently accounted for any dose rate effect at high silica average concentrations by using the Buchanan *et al.* (2003) study as part of their final Quantitative Risk Analysis (QRA) (OSHA 2016a, 81 FR 16286, 16396). MSHA has reviewed and agrees with OSHA's conclusions.

MSHA is using the Buchanan *et al.* (2003) study to explain, in part, the observed cases of progressive lung disease in miners, known as RPP in coal miners (Laney and Attfield, 2010; Wade *et al.,* 2010; Laney *et al.,* 2012b; 2017; Blackley *et al.,* 2016b, 2018b; Reynolds *et al.,* 2018b; Halldin *et al.,* 2019; Halldin *et al.,* 2020; Almberg *et al.,* 2018a; Cohen *et al.,* 2022) and accelerated silicosis in MNM miners (Dumavibhat *et al.,* 2013; Hessel *et al.,* 1988; Mohebbi and Zubeyri 2007). The inclusion of this discussion in the risk analysis is to describe research that explains, in part, the progressive disease observed in shorter-tenured miners. MSHA believes that the risks estimated by the Buchanan *et al.* model can be applied to all mining populations that have similar respirable crystalline silica exposure exceedances. MSHA estimated the increase of silicosis risk in miners exposed to extreme respirable crystalline silica exposures for varying periods of time ranging from 0 hours to 348 hours per year (*i.e.,* 0.0 percent to 20.0 percent of time at extreme exposures). This information is important because MSHA data indicate that many miners' respirable crystalline silica exposure samples over the years have exceeded the existing exposure limit(s) of 100 μg/m³. MSHA data also indicate that a smaller number of MSHA samples showed respirable crystalline silica concentrations well above the existing MSHA standard of 100 μg/m³. Over the last 15 years of MNM compliance data, 188 samples (0.3 percent) were over 500 μg/m³; the upper range of exposure was 4,289 μg/m³ ISO (see PRA Table 4 of the PRA document). Over the last 5 years of coal compliance data, eight samples (<0.1 percent) were over 500 μg/m³; the upper range of

exposure was 791.4 μg/m³ MRE (see PRA Table 7 of the PRA document).

Analysis provided by Buchanan *et al.* (2003) provides strong evidence of an exposure-rate effect for silicosis in a British Pneumoconiosis Field Research (PFR) coal mining cohort exposed to high levels of respirable crystalline silica over short periods of time (OSHA 2013b, page 335). Exposure was categorized as pre- and post-1964, the latter period being that of generally higher quartz concentrations used to estimate exposure-rate effects. For the purpose of this analysis, the results were presented for the 371 men (out of the original 547) who were between the ages of 50 and 74 at the time of the 1990/1991 follow-up, ''since they had experienced the widest range of quartz concentrations and showed the strongest exposure-response relations.'' Thus, combined with their exposure history, which went back to pre-1954, many of these men had 30 to 40+ years of highly detailed occupational exposure histories available for analysis. Of these 371 miners, there were 35 men (9.4 percent) who had X-ray films consistent with ILO category 2/1+, with at least 29 of them having progressed from less severe silicosis since the previous follow-up during the 1970s (from Miller *et al.,* 1998) (OSHA 2013b, page 335).

The Buchanan *et al.* (2003) re-analysis presented logistic regression models in stages. In the final stage of modeling, using only the statistically significant post-1964 cumulative exposures, the authors separated these exposures into, ''two quartz concentration bands, defined by the cut-point 2.0 mg/m³.'' This yielded the final simplified equation, adapted from Buchanan *et al.,* 2003, page 162:

$$\log\left(\frac{p_2}{1-p_2}\right) = -4.83 + 0.443 * E_{<2} \ + \ 1.323 * E_{>2})$$

where p_2 is the probability of profusion category 2/1 or higher (2/1+) at follow-up and E is the cumulative exposure.

In this model, both the cumulative exposure concentration variables were ''highly statistically significant in the presence of the other'' (Buchanan *et al.,* 2003, page 162). Since these variables were in the same units, mg/m³-hr, the authors noted that the coefficient for exposure concentrations >2,000 μg/m³ (≤2.0 mg/m³) was three times that for the concentrations <2,000 μg/m³ (<2.0 mg/m³). They concluded that their latest analysis showed that ''the risk of silicosis over a working lifetime can rise dramatically with exposure to such high concentrations over a timescale of merely a few months'' (Buchanan *et al.,* 2003, page 163, OSHA 2013b, page 336).

Buchanan *et al.* (2003) also used these models to estimate the risk of acquiring a chest X-ray classified as ILO category 2/1+, 15 years after exposure ends, as a function of low <2,000 μg/m³ (<2.0 mg/m³) and high >2,000 μg/m³ (≤2.0 mg/m³) quartz concentrations. OSHA chose to use this model to estimate the risk of radiological silicosis consistent with an ILO category 2/1+ chest X-ray for several exposure scenarios. They assumed 45 years of exposure, 2,000 hours/year of exposure, and no exposure above a concentration of 2,000 μg/m³ (2.0 mg/m³) (OSHA 2013b, page 336).

Buchanan *et al.* (2003) used these models to estimate the combined effect on the predicted risk of low quartz exposures (*e.g.,* 100 μg/m³, equal to 0.1 mg/m³) and short-term exposures to high quartz concentrations (*e.g.,* 2,000 μg/m³, equal to 2 mg/m³). Predicted risks were estimated for miners who progressed to silicosis level 2/1+ 15 years after exposure ended. This analysis showed the increase in predicted risk with relatively short periods of quartz exceedance exposures, over 4, 8, and 12 months. Buchanan *et al.* predicted a risk of 2.5 percent for 15 years quartz exposure to 100 μg/m³ (0.1 mg/m³). This risk increased to 10.6 percent with the addition of only 4 months of exposure at the higher concentration. The risk increased further to 72 percent with 12 months at the higher exposure of 2,000 μg/m³ (2.0 mg/m³).

The results indicate miners exposed to exceedances above MSHA's existing standard could develop progression of silicosis at an exaggerated rate. The results of Buchanan *et al.* also indicated that miners' exposure to exceedances at MSHA's proposed standard will also suffer increased risk of developing progressive disease, though at a reduced rate (see Buchanan *et al.* (2003), Table 4, page 163).

MSHA used a life table approach to estimate the lifetime excess silicosis morbidity from age 21 to age 80, assuming exposure from age 21 through age 65 (45 years of working life) and an additional 15 years of potential illness progress thereafter. MSHA used the Buchanan *et al.* (2003) model to estimate the effect of respirable crystalline silica exposure exceedances as seen in MSHA's compliance data on miners' silicosis risk at the existing and proposed standard. The model predicted the probability of developing silicosis at the 2/1+ category based on cumulative respirable crystalline silica exposures. Age-specific cumulative risk was estimated as 1/(1 + EXP(−(−4.83 + 0.443 * cumulative exposure))). The model determined that even at 17.4 hours on average per year at an exposure of 1,500 μg/m³ (1.50 mg/m³), miners' risk of developing 2/1+ silicosis increased from a baseline of 24.8/1,000 to 29.0/1,000 at the existing standard and 14/1,000 to 16.6/1,000 at the proposed standard. Of course, the more hours exposed to these levels of respirable crystalline silica resulted in even higher increased risk. It is important to note that NIOSH's X-ray classification of the lowest case of pneumoconiosis is 1/0 profusion of small opacities (NIOSH 2008c, page A–2). Using a case definition of level 2/1+, the miners studied by Buchanan *et al.* (2003) would be more likely to show clinical signs of disease. MSHA emphasizes the importance of maintaining miner exposure to respirable crystalline silica at or below the proposed standard to minimize these health risks as much as possible.

3. Silicosis and NMRD Mortality

Silicosis mortality was ascertained in the studies included in the pooled analysis by Mannetje *et al.* (2002b). These studies included cohorts of U.S. diatomaceous earth workers (Checkoway *et al.,* 1997), Finnish granite workers (Koskela *et al.,* 1994), U.S. granite workers (Costello and Graham, 1988), U.S. industrial sand workers (Steenland and Sanderson, 2001), U.S. gold miners (Steenland and Brown (1995a), and Australian gold miners (de Klerk *et al.,* 1998). The researchers analyzed death certificates across all cohorts for cause of death. OSHA relied upon the published, peer-reviewed, pooled analysis of six epidemiological studies first published by Mannetje *et al.* (2002b) and a sensitivity analysis of the data conducted by ToxaChemica, International, Inc. (2004). OSHA used the model described by Mannetje *et al.*

(2002b) and the rate ratios that were estimated from the ToxaChemica, International Inc. sensitivity analysis to estimate the risks of silicosis mortality. This process better controlled for age and exposure measurement uncertainty (OSHA 2013b, page 295). MSHA has reviewed and agrees with OSHA's conclusions. These studies are summarized below, including detailed discussion and analysis of uncertainty in the studies and associated risk estimates.

OSHA found that the estimates from Mannetje *et al.* (2002b) and ToxaChemica Inc. probably understated the actual risk because silicosis is underreported as a cause of death since there is no nationwide system for collecting silicosis morbidity case data (OSHA 2016a, 81 FR 16286, 16325). To help address this uncertainty, OSHA also included an exposure-response analysis of diatomaceous earth workers (Park *et al.,* 2002). This analysis better recognized the totality of respirable crystalline silica-related respiratory disease than the datasets of Mannetje *et al.* (2002b) and ToxaChemica International Inc. (2004). Information from the Park *et al.* (2002) study (described in the next subsection) was used to quantify the relationship between cristobalite exposure and mortality caused by NMRD, which includes silicosis, pneumoconiosis, emphysema, and chronic bronchitis. The category of NMRD captures much of the silicosis misclassification that results in underestimation of the disease. NMRD also includes risks from other lung diseases associated with respirable crystalline silica exposures. OSHA found the risk estimates derived from Park *et al.* (2002) were important to include in their range of estimates of the risk of death from respirable crystalline silica-related respiratory diseases, including silicosis (OSHA 2013b, pages 297–298). OSHA concluded that the ToxaChemica International Inc. (2004) re-analysis of Mannetje *et al.*'s (2002b) silicosis mortality data and Park *et al.*'s (2002) study of NMRD mortality provided a credible range of estimates of mortality risk from silicosis and NMRD across many workplaces. The upper end of this range, based on the Park *et al.* (2002) study, is less likely to underestimate risk because of underreporting of silicosis mortality. However, risk estimates from studies focusing on cohorts of workers from different industries cannot be directly compared (OSHA 2016a, 81 FR 16286, 16397).

a. Silicosis Mortality: Mannetje et al. (2002b); ToxaChemica, International, Inc. (2004)

Mannetje *et al.* (2002b) relied upon the epidemiological studies contained within the Steenland *et al.* (2001a) pooled analysis of lung cancer mortality that also included extensive data on silicosis. The six cohorts included:

(1) U.S. diatomaceous earth workers (Checkoway *et al.,* 1997),

(2) Finnish granite workers (Koskela *et al.,* 1994),

(3) U.S. granite workers (Costello and Graham, 1988),

(4) U.S. industrial sand workers (Steenland and Sanderson, 2001),

(5) U.S. gold miners (Steenland and Brown, 1995b), and

(6) Australian gold miners (de Klerk and Musk, 1998).

These six cohorts contained 18,364 workers and 170 silicosis deaths, where silicosis mortality was defined as death from silicosis (ICD–9 502, n = 150) or from unspecified pneumoconiosis (ICD–9 505, n = 20). Table VI–3 provides information on each cohort, including size, time period studied, overall number of deaths, and number of deaths identified as silicosis for the pooled analysis conducted by Mannetje *et al.* (2002b). The authors believed this definition to err on the side of caution in that some cases of death from silicosis in the cohorts may have been misclassified as other causes (*e.g.,* tuberculosis or COPD without mention of pneumoconiosis). Four cohorts were not included in the silicosis mortality study. The three Chinese studies did not use the ICD to code cause of death. In the South African gold miner study, silicosis was not generally recognized as an underlying cause of death. Thus, it did not appear on death certificates (OSHA 2013b, page 292).

Table VI-3. Summary of Cohort Studies Used in the Pooled Analysis for Silicosis Mortality

Author	Cohort	Size of cohort	Time period of study	Number of deaths	Number of silicosis deaths
Checkoway *et al.*, 1997	U.S. diatomaceous earth	2,342	1942-1994	749	15 ("other" NMRD, including silicosis)
Koskela *et al.*, 1994	Finnish granite	1,026	1940-1993	418	14
Costello and Graham, 1988	U.S. granite	5,408	1950-1982	1,762	43
Steenland *et al.*, 2001b	U.S. industrial sand	4,027	1974-1996	860	15
Steenland and Brown, 1995b	U.S. gold miners	3,348	1940-1996	1,925	39
de Klerk and Musk, 1998	Australian surface and underground gold miners	2,213	1961-1993	1,351	44
	Total	18,364		7,065	170

Adapted from Mannetje *et al.* (2002b)
Source: OSHA 2013b, page 293.

Mannetje *et al.* (2002a) described the exposure assessments developed for the pooled analysis. Exposure information from each of the 10 cohort studies varied and included dust measurements representing particle counts, mass of total dust, and respirable dust mass. Measurement methods also changed over time for each of the cohort studies. Generally, sampling was performed using impingers in earlier decades, and gravimetric techniques later. Exposure data based on analysis for respirable crystalline silica by XRD (the current method of choice) were available only from the study of U.S. industrial sand workers. To develop cumulative exposure estimates for all cohort members and to pool the cohort data, all exposure data were converted to units of μg/m^3 (mg/m^3) respirable crystalline silica. Cohort-specific conversion factors were generated based on the silica content of the dust to which workers were exposed. In some instances, results of side-by-side comparison sampling were available. Within each cohort, available job- or process-specific information on the silica composition or nature of the dust was used to reconstruct respirable crystalline silica exposures. Most of the studies did not have exposure measurements prior to the 1950s. Exposures occurring prior to that time were estimated either by assuming such exposures were the same as the earliest recorded for the cohort or by modeling that accounted for documented changes in dust control measures.

To evaluate the reasonableness of the exposure assessment for the lung cancer pooled study, Mannetje *et al.* (2002a) investigated the relationship between silicosis mortality and cumulative exposure. They performed a nested case-control analysis for silicosis or unspecified pneumoconiosis using conditional logistic regression. Since exposure to respirable crystalline silica is the sole cause of silicosis, any finding for which cumulative exposure was unrelated to silicosis mortality risk would suggest that serious misclassification of the exposures assigned to cohort members occurred. Cases and controls were matched for race, sex, age (within 5 years), and 100 controls were matched to each case. Each cohort was stratified into quartiles by cumulative exposure. Standardized rate ratios (SRRs) were calculated using the lowest-exposure quartile as the baseline. Odds ratios (ORs) were also calculated for the pooled data set overall, which was stratified into quintiles based on cumulative exposure. For the pooled data set, the relationship between the ORs for silicosis mortality and cumulative exposure, along with each of the 95 percent confidence intervals (95% CI), were as follows:

(1) 4,450 μg/m^3-years (4.45 mg/m^3-years), OR=3.1 (95% CI: 2.5–4.0);

(2) 9,080 μg/m^3-years (9.08 mg/m^3-years), OR=4.6 (95% CI: 3.6–5.9);

(3) 16,260 μg/m^3-years (16.26 mg/m^3-years), OR=4.5 (95% CI: 3.5–5.8); and

(4) 42,330 μg/m^3-years (42.33 mg/m^3-years), OR=4.8 (95% CI: 3.7–6.2).

In addition, in seven of the cohorts, there was a statistically significant trend between silicosis mortality and cumulative exposure. For two of the cohorts (U.S. granite workers and U.S. gold miners), the trend test was not statistically significant (p=0.10). An analysis could not be performed on the South African gold miner cohort because silicosis was never coded as an underlying cause of death, apparently due to coding practices in that country.

Based on this analysis, Mannetje *et al.* (2002a) concluded that the exposure-response relationship for the pooled data set was ''positive and reasonably monotonic.'' That is, the response increased with increasing exposure. The results also indicated that the exposure assessments provided reasonable estimates of cumulative exposures. In addition, despite some large differences in the range of cumulative exposures between cohorts, a clear positive exposure-response trend was evident in seven of the cohorts (OSHA 2013b, page 271).

Furthermore, in their pooled analysis of silicosis mortality for six of the cohorts, Mannetje *et al.* (2002b) found a clear and consistently positive response with increasing decile of cumulative exposure, although there was an anomaly in the 9th decile. Overall, these data supported a monotonic exposure-response relationship for silicosis. Thus, although some exposure misclassification almost certainly existed in the pooled data set, the authors concluded that exposure estimates did not appear to have been sufficiently misclassified to obscure an exposure-response relationship (OSHA 2013b, page 271).

As part of an uncertainty analysis conducted for OSHA, Drs. Steenland and Bartell (ToxaChemica International, Inc. 2004) examined the quality of the original data set and analysis to identify and correct any data entry, programming, or reporting errors (ToxaChemica International, Inc. 2004). This quality assurance process revealed a small number of errors in exposure calculations for the originally reported results. Primarily, these errors resulted from rounding of job class exposures when converting the original data file for use with a different statistical program. Although the corrections affected some of the exposure-response models for individual cohorts, ToxaChemica International, Inc. (2004) reported that models based on the pooled dataset were not impacted by the correction of these errors (OSHA 2013b, pages 271–272).

Silicosis mortality was evaluated using standard life table analysis in Mannetje *et al.* (2002b). Poisson regression, using 10 categories of cumulative exposure and adjusting for age, calendar time, and cohort, was conducted to derive silicosis mortality rate ratios using the lowest exposure group of 0–100 μg/m^3-years (0–0.1 mg/m^3-year) as the referent group. More detailed exploration of the exposure-response relationship using a variety of exposure metrics, including cumulative exposure, duration of exposure, average exposure (calculated as cumulative exposure/duration), and the log transformations of these variables, was conducted via nested case-control analyses (conditional logistic regression). Each case was matched to 100 controls selected from among those who had survived to at least the age of the case, with additional matching on cohort, race, sex, and date of birth within 5 years. The authors explored lags of 0, 5, 10, 15, and 20 years, noting that there is no *a priori* reason to apply an exposure lag, as silicosis can develop within a short period after exposure. However, a lag could potentially improve the model, as there is often a considerable delay in the development of silicosis following exposure. In addition to the parametric conditional logistic regression models, the authors performed some analyses using a cubic-spline model, with knots at 5, 25, 50, 75, and 95 percent of the distribution of exposure. Models with cohort-exposure interaction terms were fit to assess heterogeneity between cohorts (OSHA 2013b, page 294).

The categorical analysis found a nearly monotonic increase in silicosis rates with cumulative exposure, from 4.7 per 100,000 person-years in the lowest exposure category (0–990 μg/m^3-years [0–0.99 mg/m^3-years]) to 299 per 100,000 person-years in the highest exposure category (>28,000 μg/m^3-years [>28 mg/m^3-years]). Nested case-control analyses showed a significant association between silicosis mortality and cumulative exposure, average exposure, and duration of exposure. The best-fitting conditional logistic regression model used log-transformed cumulative exposure with no exposure lag, with a model χ^2 of 73.2 versus χ^2

values ranging from 19.9 to 30.9 for average exposure, duration of exposure, and untransformed cumulative exposure (1 degree of freedom). No significant heterogeneity was found between individual cohorts for the model based on log-cumulative exposure. The cubic-spline model did not improve the model fit for the parametric logistic regression model using the log-cumulative exposure (OSHA 2013b, page 294).

Mannetje *et al.* (2002b) developed estimates of silicosis mortality risk through age 65 for two levels of exposure (50 and 100 μg/m³ respirable crystalline silica), assuming a working life of occupational exposure from age 20 to 65. Risk estimates were calculated based on the silicosis mortality rate ratios derived from the categorical analysis described above. The period of time over which workers' exposures and risks were calculated (age 20 to 65) was divided into one-year intervals. The mortality rate used to calculate risk in any given interval was dependent on the worker's cumulative exposure at that time. The equation used to calculate risk is as follows:

$$\text{Risk} = 1 - \exp\left(-\sum_{i=20}^{65} \text{time}_i * \text{rate}_i\right)$$

Where time_i is equal to one for every age *i,* and rate_i is the age-, calendar time-, and cohort adjusted silicosis mortality rate associated with the level of cumulative exposure acquired at age *i,* as presented in Mannetje *et al.* (2002b, Table 2, page 725). The calculated absolute risks equal the excess risks since there is no background rate of silicosis in the exposed population. Mannetje *et al.* (2002b) estimated the lifetime risk of death from silicosis, assuming 45 years of exposure to 100 μg/m³, to be 13 deaths per 1,000 workers; at an exposure of 50 μg/m³, the estimated lifetime risk was 6 per 1,000. Confidence intervals (CIs) were not reported (OSHA 2013b, page 295).

In summary, OSHA's estimates of silicosis morbidity risks were based on studies of active and retired workers for which exposure histories could be constructed and chest X-ray films could be evaluated for signs of silicosis. There is evidence in the record that chest X-ray films are relatively insensitive to detecting lung fibrosis (OSHA 2016a, 81 FR 16286, 16397). MSHA agrees with OSHA's estimate of silicosis morbidity risks.

Hnizdo *et al.* (1993a) found chest X-ray films to have low sensitivity for detecting lung fibrosis related to initial cases of silicosis, compared to pathological examination at autopsy. To address the low sensitivity of chest X-rays for detecting silicosis, Hnizdo *et al.* (1993a) recommended that radiographs consistent with an ILO category of 0/1 or greater be considered indicative of silicosis among workers exposed to a high concentration of respirable crystalline silica-containing dust. In like manner, to maintain high specificity, chest X-rays classified as category 1/0 or 1/1 should be considered as a positive diagnosis of silicosis in miners who work in low dust (0.2 mg/m³) occupations. The studies on which OSHA relied in its risk assessment typically used an ILO category of 1/0 or greater to identify cases of silicosis. According to Hnizdo *et al.* (1993), they were unlikely to have included many false positives (*i.e.,* assumed diagnosis of silicosis in a miner without the disease), but may have included false negatives (*i.e.,* failure to identify cases of silicosis). Thus, in OSHA's risk assessment, the use of chest X-rays to ascertain silicosis cases in the morbidity studies may have underestimated risk given the X-rays' low sensitivity to detect disease. MSHA agrees with OSHA's assessment.

To estimate the risk of silicosis mortality at the existing and proposed exposure limits, OSHA used the categorical model described by Mannetje *et al.* (2002b) but did not rely upon the Poisson regression in their study. Instead, OSHA used rate ratios estimated from a nested case-control design implemented as part of a sensitivity analysis (ToxaChemica, International, Inc. 2004). The case-control design was selected because it was expected to better control for age. In addition, the rate ratios derived from the case control study were derived from a Monte Carlo analysis to reflect exposure measurement uncertainty (See ToxaChemica, International, Inc. (2004), Table 7, page 40). The rate ratio for each interval of cumulative exposure was multiplied by the annual silicosis rate assumed to be associated with the lowest exposure interval, 4.7 per 100,000 for exposures of 990 μg/m³-years (0.99 mg/m³-years), to estimate the silicosis rate for each interval of exposure. The lifetime silicosis mortality risk is the sum of the silicosis rate for each year of life through age 85 and assuming exposure from age 20 to 65. From this analysis, OSHA estimated the silicosis mortality risk for exposure to the then existing general industry exposure limit (100 μg/m³) and proposed exposure limit (50 μg/m³) to be 11 (95% CI 5–37) and 7 (95% CI 3–21) deaths per 1,000 workers, respectively. For exposure to 250μg/m³ (0.25 mg/m³) and 500 μg/m³ (0.5 mg/m³), the range approximating the then existing construction/shipyard exposure limit, OSHA estimated the risk to range from 17 (95% CI 5–66) to 22 (95% CI 6–85) deaths per 1,000 workers (OSHA 2013b, page 294–295).

In view of the foregoing discussion, MSHA agrees with OSHA's analysis, and MSHA also selected the Mannetje *et al.* (2002b) study for estimating silicosis mortality risks and cases. MSHA used a life table analysis to estimate the lifetime excess silicosis mortality through age 80. To estimate the age-specific risk of silicosis mortality at the existing standards, the proposed PEL, and the proposed action level, MSHA used the same categorical model that OSHA used in their PQRA (as described above from Mannetje *et al.,* 2002b; ToxaChemica International, Inc. 2004) to estimate lifetime risk following cumulative exposure of 45 years. MSHA used the 2018 all-cause mortality rates (NCHS, Underlying Cause of Death, 2018 on CDC WONDER Online Database, released in 2020b) as all-cause mortality rates. As stated previously, the general (unexposed) population is assumed to have silicosis mortality rates equal to zero.

b. NMRD Mortality: Park et al. (2002)

In addition to causing silicosis, exposure to respirable crystalline silica causes increased risks of other NMRD. These include chronic obstructive pulmonary disease (COPD), which includes chronic bronchitis, emphysema, and combinations of the two and is a cause of chronic airways obstruction. COPD is characterized by airflow limitation that is usually progressive and not fully reversible. OSHA reviewed several studies of NMRD morbidity and used a study by Park *et al.* (2002) to assess NMRD risk. Checkoway *et al.* (1997) originally studied a California diatomaceous earth

cohort for which Park *et al.* (2002) then analyzed the effect of respirable crystalline silica exposures on the development of NMRD. The authors quantified the relationship between exposure to cristobalite and mortality from NMRD (OSHA 2013b, page 295).

The California diatomaceous earth cohort consisted of 2,570 diatomaceous earth workers employed for 12 months or more from 1942 to 1994. As noted above, Park *et al.* (2002) was interested in the relationship between cristobalite exposure and mortality from chronic lung disease other than cancer (LDOC). LDOC included chronic diseases such as pneumoconiosis (which included silicosis), chronic bronchitis, and emphysema, but excluded pneumonia and other infectious diseases. The investigators selected LDOC as the health endpoint for three reasons. First, increased mortality from LDOC had been documented among respirable crystalline silica-exposed workers in several industry sectors, including gold mining, pottery, granite, and foundry industries. Second, the authors pointed to the likelihood that silicosis as a cause of death is often misclassified as emphysema or chronic bronchitis. Third, the number of deaths from the diatomaceous earth worker cohort that were attributed to silicosis was too small (10) for analysis. Industrial hygiene data for the cohort were available from the employer for total dust, respirable crystalline silica (mostly cristobalite), and asbestos. Smoking information was available for about 50 percent of the cohort and for 22 of the 67 LDOC deaths available for analysis, permitting Park *et al.* (2002) to partially adjust for smoking (OSHA 2013b, pages 295–296).

Park *et al.* (2002) used the exposure assessment previously reported by Seixas *et al.* (1997) and used by Rice *et al.* (2001) to estimate cumulative respirable crystalline silica exposures for each worker in the cohort based on detailed work history files. The average respirable crystalline silica concentration for the cohort was 290 μg/m^3 (0.29 mg/m^3) over the period of employment (Seixas *et al.,* 1997). The total respirable dust concentration in the diatomaceous earth plant was 3,550 μg/m^3 (3.55 mg/m^3) before 1949 and declined by more than 10-fold after 1973, to 290 μg/m^3 (0.29 mg/m^3) (Seixas *et al.,* 1997). The concentration of respirable crystalline silica in the dust ranged from one to 25 percent and was dependent on the location within the worksite. It was lowest at the mine and greatest in the plant where the raw ore was calcined into final product. The average cumulative exposure values for total respirable dust and respirable crystalline silica were 7,310 μg/m^3-year (7.31 mg/m^3-year) and 2,160 μg/m^3-year (2.16 mg/m^3-year), respectively. The authors also estimated cumulative exposure to asbestos (OSHA 2013b, page 296).

Using Poisson regression models and Cox's proportional hazards models, the authors fit the same series of relative rate exposure-response models that were evaluated by Rice *et al.* (2001) for lung cancer (*i.e.,* log-linear, log-square root, log-quadratic, linear relative rate, a power function, and a shape function). In general form, the relative rate model was:

$$\text{Rate} = \exp(a_0) \times f(E),$$

where $\exp(a_0)$ is the background rate and E is the cumulative respirable crystalline silica exposure. Park *et al.* (2002) also employed an additive excess rate model of the form:

$$\text{Rate} = \exp(a_0) + \exp(a_E).$$

Relative or excess rates were modeled using internal controls and adjusting for age, calendar time, ethnicity, and time since first entry into the cohort. In addition, relative rate models were evaluated using age- and calendar time-adjusted external standardization to U.S. population mortality rates for 1940 to 1994 (OSHA 2013b, page 296).

There were no LDOC deaths recorded among workers having cumulative exposures above 32,000 μg/m^3-years (32 mg/m^3-years), causing the response to level off or decline in the highest exposure range. The authors believed the most likely explanation for this observation (which was also observed in their analysis of silicosis morbidity in this cohort) was some form of survivor selection, possibly smokers or others with compromised respiratory function leaving work involving extremely high dust concentrations. These authors suggested several alternative explanations. First, there may have been a greater depletion of susceptible populations in high dust areas. Second, there may have been greater misclassification of exposures in the earlier years where exposure data were lacking (and when exposures were presumably the highest) (OSHA 2013b, pages 296–297).

Therefore, Park *et al.* (2002) performed exposure-response analyses that restricted the dataset to observations where cumulative exposures were below 10,000 μg/m^3-years (10 mg/m^3-years). This is a level more than four times higher than that resulting from 45 years of exposure to the former OSHA PEL for cristobalite (which was 50 μg/m^3 (0.05 mg/m^3) when cristobalite was the only polymorph present). These investigators also conducted analyses using the full dataset (OSHA 2013b, page 297).

Model fit was assessed by evaluating the decrease in deviance resulting from addition of the exposure term, and cubic-spline models were used to test for smooth departures from each of the model forms described. Park *et al.* (2002) found that both lagged and unlagged models fit well, but unlagged models provided a better fit. In addition, they believed that unlagged models were biologically plausible in that recent exposure could contribute to LDOC mortality. The Cox proportional hazards models yielded results that were similar to those from the Poisson analysis. Consequently, only the results from the Poisson analysis were reported. In general, the use of external adjustments for age and calendar time yielded considerably improved fit over models using internal adjustments. The additive excess rate model also proved to be clearly inferior compared to the relative rate models. With one exception, the use of cumulative exposure as the exposure metric consistently provided better fits to the data than did intensity of exposure (*i.e.,* cumulative exposure divided by duration of exposure). As to the exception, when the highest-exposure cohort members were included in the analysis, the log-linear model produced a significantly improved fit with exposure intensity as the exposure metric, but a poor fit with cumulative exposure as the metric (OSHA 2013b, page 297).

Among the models based on the restricted dataset (excluding observations with cumulative exposures greater than 10,000 μg/m^3-years (10 mg/m^3-years)), the best-fitting model with a single exposure term was the linear relative rate model using external adjustment. Most of the other single-term models using external adjustment fit almost as well. Of the models with more than one exposure term, the shape model provided no improvement in fit compared with the linear relative rate model. The log-quadratic model fit slightly better than the linear relative rate model, but Park *et al.* (2002) did not consider the gain in fit sufficient to justify an additional exposure term in the model (OSHA 2013b, page 297).

Based on its superior fit to the cohort data, Park *et al.* (2002) selected the linear relative rate model with external adjustment and use of cumulative exposure as the basis for estimating LDOC mortality risks among exposed workers. Competing mortality was accounted for using U.S. death rates published by the National Center for

Health Statistics (1996). The authors estimated the lifetime excess risk for white men exposed to respirable crystalline silica (mainly cristobalite) for 45 years at 50 μg/m³ (0.05 mg/m³) to be 54 deaths per 1,000 workers (95% CI: 17–150) using the restricted dataset, and 50 deaths per 1,000 using the full dataset. For exposure to 100 μg/m³ (0.1 mg/m³), they estimated 100 deaths per 1,000 using the restricted dataset, and 86 deaths per 1,000 using the full dataset. The CIs were not reported (OSHA 2013b, page 297).

The estimates of Park *et al.* (2002) were about eight to nine times higher than those that were calculated for the pooled analysis of silicosis mortality (Mannetje *et al.,* 2002b). Also, these estimates are not directly comparable to those from Mannetje *et al.* (2002b) because the mortality endpoint for the Park *et al.* (2002) analysis was death from all non-cancer lung diseases beyond silicosis (including pneumoconiosis, emphysema, and chronic bronchitis). In the pooled analysis by Mannetje *et al.* (2002b), only deaths coded as silicosis or other pneumoconiosis were included (OSHA 2013b, pages 297–298).

Less than 25 percent of the LDOC deaths in the Park *et al.* (2002) analysis were coded as silicosis or other pneumoconiosis (15 of 67). As noted by Park *et al.* (2002), it is likely that silicosis as a cause of death is often misclassified as emphysema or chronic bronchitis (although COPD is part of the spectrum of disease caused by respirable crystalline silica exposure and can occur in the absence of silicosis). Thus, the selection of deaths by Mannetje *et al.* (2002b) may have underestimated the true risk of silicosis mortality. The analysis by Park *et al.* (2002) would have more fairly captured the total respiratory mortality risk from all non-malignant causes, including silicosis and chronic obstructive pulmonary disease. Furthermore, Park *et al.* (2002) used untransformed cumulative exposure in a linear model compared to the log-transformed cumulative exposure metric used by Mannetje *et al.* (2002b). This would have caused the exposure-response relationship to flatten in the higher exposure ranges (OSHA 2013b, page 298).

It is also possible that some of the difference between Mannetje *et al.*'s (2002b) and Park *et al.*'s (2002) risk estimates reflected factors specific to the nature of exposure among diatomaceous earth workers (*e.g.,* exposure to cristobalite vs. quartz). However, neither the cancer risk assessments nor assessments of silicosis morbidity supported the hypothesis that cristobalite is more hazardous than quartz (OSHA 2013b, page 298).

Based on the available risk assessments for silicosis mortality, OSHA believed that the estimates from the pooled study by Mannetje *et al.*'s (2002b) represented those least likely to overestimate mortality risk. It was unlikely to have overstated silicosis mortality risks given that the estimates reflected only those deaths where silicosis was specifically identified on death certificates. Therefore, there was most likely an underestimate of the true silicosis mortality risk. In contrast, the risk estimates provided by Park *et al.* (2002) for the diatomaceous earth cohort would have captured some of this misclassification and included risks from other lung diseases (*e.g.,* emphysema, chronic bronchitis) that have been associated with respirable crystalline silica exposure. Therefore, OSHA believed that the Park *et al.* (2002) study provided a better basis for estimating the respirable crystalline silica-related risk of NMRD mortality, including that from silicosis. Based on Park *et al.*'s (2002) linear relative rate model [$RR = 1 + \beta x$, where $\beta = 0.5469$ (no standard error reported) and x = cumulative exposure], OSHA used a life table analysis to estimate the lifetime excess NMRD mortality through age 85. For this analysis, OSHA used all-cause and cause-specific background mortality rates for all males (National Center for Health Statistics, 2009). Background rates for NMRD mortality were based on rates for ICD–10 codes J40–J47 (chronic lower respiratory disease) and J60–J66 (pneumoconiosis). OSHA believed that these corresponded closely to the ICD–9 disease classes (ICD 490–519) used by the original investigators. According to CDC (2001), background rates for chronic lower respiratory diseases were increased by less than five percent because of the reclassification to ICD–10. From the life table analysis, OSHA estimated that the excess NMRD risk due to respirable crystalline silica exposure at the former general industry PEL (100 μg/m³) and at OSHA's final PEL (50 μg/m³) for 45 years are 83 and 43 deaths per 1,000, respectively. For exposure at the former construction/shipyard exposure limit, OSHA estimated that the excess NMRD risk ranged from 188 to 321 deaths per 1,000 (OSHA 2013b, page 298).

Following its own independent review, MSHA agrees with and has followed the rationale presented by OSHA in its selection of the Park *et al.* (2002) model to estimate NMRD mortality risk in miners. Coal miners were not included in the NMRD mortality analysis because the endpoint was included in the *Quantitative Risk Assessment in Support of the Final Respirable Coal Mine Dust Rule* (Dec. 2013).

MSHA used a life table analysis to estimate the lifetime excess NMRD mortality through age 80. MSHA used the Park *et al.* (2002) model to estimate age-specific NMRD mortality risk as 1 + 0.5469 * cumulative exposure. MSHA used all-cause and cause-specific background mortality rates for all males for 2018 (National Center for Health Statistics, Underlying Cause of Death 2018 on CDC WONDER Online Database, released in 2020b). Background rates for NMRD mortality were based on rates for ICD–10 codes J40–J47 (chronic lower respiratory disease) and J60–J66 (pneumoconiosis).

4. Lung Cancer Mortality

Since the publication of OSHA's final rule in 2016, NIOSH has published two documents concerning occupational carcinogens, *Chemical Carcinogen Policy* (2017b) and *Practices in Occupational Risk Assessment* (2019a). NIOSH will no longer set recommended exposure levels for occupational carcinogens. Instead, NIOSH intends to develop risk management limits for carcinogens (RML-Cas) to acknowledge that, for most carcinogens, there is no known safe level of exposure. An RML–CA is a reasonable starting place for controlling exposures. An RML–CA limit is based on a daily maximum 8-hour TWA concentration of a carcinogen above which a worker should not be exposed (NIOSH 2017b, page vi). RML-Cas for occupational carcinogens are established at the estimated 95% lower confidence limit on the concentration (*e.g.,* dose) corresponding to 1 in 10,000 (10^{-4}) lifetime excess risk (when analytically possible to measure) (NIOSH 2019a). NIOSH stated that in order to incrementally move toward a level of exposure to occupational chemical carcinogens that is closer to background, NIOSH will begin issuing recommendations for RML-Cas that would advise employers to take additional action to control chemical carcinogens when workplace exposures result in excess risks greater than 10^{-4} (NIOSH 2017b, page vi).

MSHA used the Miller *et al.* (2007) and Miller and MacCalman (2010) studies to estimate lung cancer mortality risk in miners. In British coal miners, excess lung cancer mortality was studied through the end of 2005 in a cohort of 17,800 miners (Miller *et al.,* 2007; Miller and MacCalman, 2010). By that time, the cohort had accumulated

516,431 person-years of observation (an average of 29 years per miner), with 10,698 deaths from all causes. Overall lung cancer mortality was elevated (Standard Mortality Ratio (SMR) = 115.7, 95% CI: 104.8–127.7), and a positive exposure-response relationship with respirable crystalline silica exposure was determined from Cox regression after adjusting for smoking history. Three strengths of this study were: 1) the detailed time-exposure measurements of quartz and total mine dust, 2) detailed individual work histories, and 3) individual smoking histories. For lung cancer, analyses based on Cox regression provided strong evidence that, for these coal miners, although quartz exposures were associated with increased lung cancer risk, simultaneous exposures to coal dust did not cause increased lung cancer risk (OSHA 2016a, 81 FR 16286, 16308).

Miller *et al.* (2007) and Miller and MacCalman (2010) conducted a follow-up study of cohort mortality, begun in 1970. Their previous report on mortality presented a follow-up analysis on 18,166 coal miners from 10 British coal mines followed through the end of 1992 (Miller *et al.,* 1997). The two reports from 2007 and 2010 analyzed the mortality experience of 17,800 of these miners (18,166 minus 346 men whose vital status could not be determined) and extended the analysis through the end of 2005. Causes of deaths that were of particular interest included pneumoconiosis, other NMRD, lung cancer, stomach cancer, and tuberculosis. The researchers noted that no additional exposure measurements were included in the updated analysis, since all the mines had closed by the mid-1980s. However, some of these men might have had additional exposure at other mines or facilities not reported in this study (OSHA 2013b, page 287).

This cohort mortality study included analyses using both external and internal controls. The external controls used British administrative regional age-, time-, and cause-specific mortality rates from which to calculate SMRs. The internal controls from the mines used Cox proportional hazards regression methods, which considered each miner's age, smoking status, and detailed dust and respirable crystalline silica (quartz) time-dependent exposure measurements. Cox regression analyses were done in stages, with the initial analyses used to establish what factors were required for baseline adjustment (OSHA 2013b, page 287).

For the analysis using external mortality rates, the all-cause mortality SMR from 1959 through 2005 was 100.9 (95% CI: 99.0–102.8), based on all 10,698 deaths. However, these SMRs were not uniform over time. For the period from 1990–2005, the SMR was 109.6 (95% CI:106.5–112.8), while the ratios for previous periods were less than 100. This pattern of increasing SMRs in the recent past was also seen for cause-specific deaths from chronic bronchitis, SMR = 330.0 (95% CI:268.1–406.2); tuberculosis, SMR = 193.4 (95% CI: 86.9–430.5); cardiovascular disease, SMR = 106.6 (95% CI: 102.0–111.5); all cancers, SMR = 107.1 (95% CI:101.3–113.2); and lung cancer, SMR = 115.7 (95% CI: 104.8–127.7). The SMR for NMRD was 142.1 (95% CI: 132.9–152.0) in this recent period and remained highly statistically significant. In their previous analysis on mortality from lung cancer, reflecting follow-up through 1995, Miller *et al.* (1997) had not found any increase in the risk of lung cancer mortality (OSHA 2013b, page 287).

OSHA reported that Miller and MacCalman (2010) used these analyses to estimate relative risks for a lifetime exposure of 5 gram-hours/m^3 (ghm^{-3}) to quartz (OSHA 2013b, page 288). This is equivalent to approximately 55 μg/m^3 (0.055 mg/m^3) for 45 years, assuming 2,000 hours per year of exposure and/or 100 ghm^{-3} total dust. The authors estimated relative risks (see Miller and MacCalman (2010), Table 4, page 9) for various causes of death including pneumoconiosis, COPD, ischemic heart disease, lung cancer, and stomach cancer. Their results were based on models with single exposures to dust or respirable crystalline silica (quartz) or simultaneous exposures to both, with and without 15-year lag periods. Generally, the risk estimates were slightly greater using a 15-year lag period.

For the models using only quartz exposures with a 15-year lag, pneumoconiosis, RR = 1.21 (95% CI: 1.12–1.31); COPD, RR = 1.11 (95% CI: 1.05–1.16); and lung cancer, RR = 1.07 (95% CI: 1.01–1.13) showed statistically significant increased risks.

For lung cancer, analyses based on these Cox regression methods provided strong evidence that, for these coal miners, quartz exposures were associated with increased lung cancer risk, but simultaneous exposures to coal dust were not associated with increased lung cancer risk. The relative risk (RR) estimate for lung cancer deaths using coal dust with a 15-year lag in the single exposure model was 1.03 (95% CI: 0.96 to 1.10). In the model using both quartz and coal mine dust exposures, the RR based on coal dust decreased to 0.91, while that for quartz exposure remained statistically significant, increasing to a RR = 1.14 (95% CI: 1.04 to 1.25). According to Miller and MacCalman (2010), other analyses have shown that exposure to radon or diesel fumes was not associated with an increased cancer risk among British coal miners (OSHA 2013b, page 288).

The RRs in the Miller and MacCalman (2010) report were used to estimate excess lung cancer risk for OSHA's purposes. Life table analyses were done as in the other studies above. Based on the RR of 1.14 (95% CI: 1.04–1.25) for a cumulative exposure of 5 ghm10^{-3}, the regression slope was recalculated as β = 0.0524 per 1,000 μg-years (per mg/m^3-years) and used in the life table program. Similarly, the 95-percent CI on the slope was 0.0157–0.08926. From this study, the lifetime (to age 85) risk estimates for 45 years of exposure to 50 μg/m^3 (0.05 mg/m^3) and 100 μg/m^3 (0.100 mg/m^3) respirable crystalline silica were 6 and 13 excess lung cancer deaths per 1,000 workers, respectively. These lung cancer risk estimates were less by about 2- to 4-fold than those estimated from the other cohort studies described above.

However, three factors might explain these differences. First, these estimates were adjusted for individual smoking histories so any smoking-related lung cancer risk (or smoking–respirable crystalline silica interaction) that might possibly be attributed to respirable crystalline silica exposure in the other studies were not reflected in the risk estimates derived from the study of these coal miners. Second, these coal miners had significantly increased risks of death from other lung diseases, which may have decreased the lung cancer-susceptible population. Of note, for example, were the higher increased SMRs for NMRD during the years 1959–2005 for this cohort (Miller and MacCalman, 2010, Table 2, Page 7). Third, the difference in risk seen in these coal miners may have been the result of differences in the toxicity of quartz present in the coal mines as compared to the work environments of the other cohorts. One Scottish mine (Miller *et al.,* 1998) in this 10-mine study had been cited as having presented ''unusually high exposures to [freshly fractured] quartz.'' However, this was also described as an atypical exposure among miners working in the 10 mines. Miller and MacCalman (2010) stated that increased quartz-related lung cancer risk in their cohort was not confined to that Scottish mine alone. They also stated, ''The general nature of some quartz exposures in later years . . . may have been different from earlier periods when coal extraction was

largely manual . . .'' (OSHA 2013b, page 288).

All these factors in this mortality analysis for the British coal miner cohort could have combined to yield lower lung cancer risk estimates. However, OSHA believed that these coal miner-derived estimates were credible because of the quality of several study factors relating to both study design and conduct. In terms of design, the cohort was based on union rolls with very good participation rates and good reporting. The study group also included over 17,000 miners, with an average of nearly 30 years of follow-up, and about 60 percent of the cohort had died. Just as important was the high quality and detail of the exposure measurements, both of total dust and quartz. However, one exposure factor that may have biased the estimates upward was the lack of exposure information available for the cohort after the mines closed in the mid-1980s. Since the death ratio for lung cancer was higher during the last study period, 1990–2005, this period contributed to the increased lung cancer risk. It is possible that any quartz exposure experienced by the cohort after the mines had closed could have accelerated either death or malignant tumor (lung cancer) growth. By not accounting for this exposure, if there were any, the risk estimates would have been biased upwards. Although the 15-year lag period for quartz exposure used in the analyses provided slightly higher risk estimates than use of no lag period, the better fit seen with the lag may have been artificial. This may have occurred since there appeared to have been no exposures during the recent period when risks were seen to have increased (OSHA 2013b, page 289).

OSHA believed, as does MSHA, that this study of a large British coal mining cohort provided convincing evidence of the carcinogenicity of respirable crystalline silica. This large cohort study, with almost 30 years of follow-up, demonstrated a positive exposure-response after adjusting for smoking histories. Additionally, the authors state that there was no evidence that exposure to potential confounders such as radon and diesel exhaust were associated with excess lung cancer risk (Miller and MacCalman (2010), page 270). MSHA is relying on the British studies conducted by Miller *et al.* (2007) as well as Miller and MacCalman (2010) to estimate the lung cancer risk in all miners.

MSHA found these two studies suitable for use in the quantitative characterization of health risks to exposed miners for several reasons. First, their study populations were of sufficient size to provide adequate statistical power to detect low levels of risk. Second, sufficient quantitative exposure data were available over a sufficient span of time to characterize cumulative respirable crystalline silica exposures of cohort members. Third, the studies either adjusted for or otherwise adequately addressed confounders such as smoking and exposure to other carcinogens. Finally, these investigators developed quantitative assessments of exposure-response relationships using appropriate statistical models or otherwise provided sufficient information that permits MSHA to do so.

MSHA implemented the risk model in its life table analysis so that the use of background rates of lung cancer and assumptions regarding length of exposure and lifetime were consistent across models. Thus, MSHA was able to estimate lung cancer risks associated with exposure to specific levels of respirable crystalline silica of interest to the Agency. MSHA used the Miller *et al.* (2007) and Miller and MacCalman (2010) model to estimate age-specific cumulative lung cancer mortality risk as EXP(0.0524 * cumulative exposure), lagged 15 years.

MSHA's PRA uses risk estimates derived from 10 coal mines in the U.K. (Miller *et al.,* 2007; Miller and MacCalman, 2010). These investigators developed regression analyses for time-dependent estimates of individual exposures to respirable dust. Their analyses were based on the detailed individual exposure estimates of the PFR programme. To estimate mortality risk for lung cancer from the pooled cohort analysis, MSHA used the same life table approach as OSHA. However, for this life table analysis, MSHA used 2018 mortality rates for U.S. males (*i.e.,* all-cause and background lung cancer). The 2018 lung cancer death rates were based on the ICD–10 classification of diseases, C34.0, C34.2, C34.1, C34.3, C34.8, and C34.9. Lifetime risk estimates reflected excess risk through age 80. To estimate lung cancer risks, MSHA used the log-linear relative risk model, exp(0.0524 × cumulative exposure), lagged 15 years. The coefficient for this model was 0.0524 (OSHA 2013b, page 290).

5. ESRD Mortality

Several epidemiological studies have found statistically significant associations between occupational exposure to respirable crystalline silica and renal disease, although others have failed to find a statistically significant association. These studies are discussed in the Health Effects document. Possible mechanisms suggested for respirable crystalline silica-induced renal disease included a direct toxic effect on the kidney, deposition of immune complexes (IgA) in the kidney following respirable crystalline silica-related pulmonary inflammation, and an autoimmune mechanism (Gregorini *et al.,* 1993; Calvert *et al.,* 1997; Parks *et al.,* 1999; Steenland 2005b) (OSHA 2016a, 81 FR 16286, 16310).

MSHA, like OSHA, chose the Steenland *et al.* (2002a) study to include in the PRA. In a pooled cohort analysis, Steenland *et al.* (2002a) combined the industrial sand cohort from Steenland *et al.* (2001b), the gold mining cohort from Steenland and Brown (1995a), and the Vermont granite cohort studies by Costello and Graham (1988). All three were included in portions of OSHA's PQRA for other health endpoints: under lung cancer mortality in Steenland *et al.* (2001a) and under silicosis mortality in the related work of Mannetje *et al.* (2002b). In all, the combined cohort consisted of 13,382 workers with exposure information available for 12,783. The analysis demonstrated statistically significant exposure-response trends for acute and chronic renal disease mortality with quartiles of cumulative respirable crystalline silica exposure (OSHA 2016a, 81 FR 16286, 16310).

The average duration of exposure, cumulative exposure, and concentration of respirable crystalline silica for the pooled cohort were 13.6 years, 1,200 μg/m^3-years (1.2 mg/m^3-years), and 70 μg/m^3 (0.07 mg/m^3), respectively. Renal disease risk was most prevalent among workers with cumulative exposures of 500 μg/m^3 or more (Steenland *et al.,* 2002a). SMRs (compared to the U.S. population) for renal disease (acute and chronic glomerulonephritis, nephrotic syndrome, acute and chronic renal failure, renal sclerosis, and nephritis/nephropathy) were statistically significant and elevated based on multiple cause of death data (SMR 1.28, 95% CI: 1.10–1.47, 194 deaths) and underlying cause of death data (SMR 1.41, 95% CI: 1.05–1.85, 51 observed deaths) (OSHA 2013b, page 315).

A nested case-control analysis was also performed which allowed for more detailed examination of exposure-response. This analysis included 95 percent of the cohort for which there were adequate work history and quartz exposure data. This analysis included 50 cases for underlying cause mortality and 194 cases for multiple-cause mortality. Each case was matched by race, sex, and age within 5 years to 100 controls from the cohort. Exposure-response trends were examined in a

categorical analysis where renal disease mortality of the cohort divided by exposure quartile was compared to U.S. rates (OSHA 2013b, page 315).

In this analysis, statistically significant exposure-response trends for SMRs were observed for multiple-cause ($p < 0.000001$) and underlying cause ($p = 0.0007$) mortality (Steenland *et al.,* 2002a; Table 1; Page 7).

With the lowest exposure quartile group serving as a referent, the case-control analysis showed monotonic trends in mortality with increasing cumulative exposure. Conditional regression models using log-cumulative exposure fit the data better than cumulative exposure (with or without a 15-year lag) or average exposure. Odds ratios by quartile of cumulative exposure were 1.00, 1.24, 1.77, and 2.86 ($p = 0.0002$) for multiple cause analyses and 1.00, 1.99, 1.96, and 3.93 for underlying cause analyses ($p = 0.03$) (Steenland *et al.,* 2002a; Table 2; Page 7). For multiple-cause mortality, the exposure-response trend was statistically significant for cumulative exposure ($p = 0.004$) and log-cumulative exposure ($p = 0.0002$), whereas for underlying cause mortality, the trend was statistically significant only for log-cumulative exposure ($p = 0.03$). The exposure-response trend was homogeneous across the three cohorts and interaction terms did not improve model fit (OSHA 2013b, pages 216, 315).

Based on the exposure-response coefficient for the model with the log of cumulative exposure, Steenland (2005) estimated lifetime excess risks of death (age 75) over a working life (age 20 to 65). At 100 μg/m^3 (0.1 mg/m^3) respirable crystalline silica, this risk was 5.1 percent (95% CI 3.3–7.3) for ESRD based on 23 cases (Steenland *et al.,* 2001b). It was 1.8 percent (95% CI 0.8–9.7) for kidney disease mortality (underlying), based on 51 deaths (Steenland *et al.,* 2002a) above a background risk of 0.3 percent (OSHA 2013b, page 216).

MSHA notes that these studies added to the evidence that renal disease is associated with respirable crystalline silica exposure. Statistically significant increases in odds ratios and SMRs were seen primarily for cumulative exposures of >500 μg/m^3-years (0.5 mg/m^3-years). Steenland (2005b) noted that this could have occurred from working for 5 years at an exposure level of 100 μg/m^3 (0.1 mg/m^3) or 10 years at 50 μg/m^3 (0.05 mg/m^3).

OSHA had a large body of evidence, particularly from the three-cohort pooled analysis (Steenland *et al.,* 2002a), on which to conclude that respirable crystalline silica exposure increased the risk of renal disease mortality and morbidity. The pooled analysis by Steenland *et al.* (2002a) involved a large number of workers from three cohorts with well-documented, validated job-exposure matrices. These investigators found a positive, monotonic increase in renal disease risk with increasing exposure for underlying and multiple cause data. Thus, the exposure and work history data were unlikely to have been seriously misclassified. However, there are considerably less data available for renal disease than there are for silicosis mortality and lung cancer mortality. Nevertheless, OSHA concluded that the underlying data were sufficient to provide useful estimates of risk and included the Steenland *et al.* (2002a) analysis in its PQRA (OSHA 2013b, pages 229, 316).

To estimate renal disease mortality risk from the pooled cohort analysis, OSHA implemented the same life table approach as was done for the assessments on lung cancer and NMRD. However, for this life table analysis, OSHA used 1998 all-cause and background renal mortality rates for U.S. males, rather than the 2006 rates used for lung cancer and NMRD. The 1998 rates were based on the ICD–9 classification of diseases, which was the same as used by Steenland *et al.* (2002a) to ascertain the cause of death of workers in their study. However, U.S. cause-of-death data from 1999 to present are based on the ICD–10, in which there were considerable changes in the classification system for renal diseases. According to CDC (2001), the change in the classification from ICD–9 to ICD–10 increased death rates for nephritis, nephritic syndrome, and nephrosis by 23 percent, in large part due to reclassifying ESRD. The change from ICD–9 to ICD–10 did not materially affect background rates for those diseases grouped as lung cancer or NMRD. Consequently, OSHA conducted its analysis of excess renal disease mortality associated with respirable crystalline silica exposure using background mortality rates for 1998. As before, lifetime risk estimates reflected excess risk through age 85. To estimate renal mortality risks, OSHA used the log-linear model with log-cumulative exposure that provided the best fit to the pooled cohort data (Steenland *et al.,* 2002a). The coefficient for this model was 0.269 (SE = 0.120) (OSHA 2013b, page 316). Based on the life table analysis, OSHA estimated that exposure to the former general industry exposure limit of 100 μg/m^3 and to the final exposure limit of 50 μg/m^3 over a working life would result in a lifetime excess renal disease risk of 39 (95% CI: 2–200) and 32 (95% CI: 1.7–147) deaths per 1,000, respectively. OSHA also estimated lifetime risks associated with the former construction and shipyard exposure limits of 250 and 500 μg/m^3. These lifetime excess risks ranged from 52 (95% CI 2.2–289) to 63 (95% CI 2.5–368) deaths per 1,000 workers (OSHA 2013b, page 316).

MSHA concludes that the evidence supporting causality regarding renal risk outweighs the evidence casting doubt on that conclusion. However, MSHA acknowledges the uncertainty associated with the divergent findings in the renal disease literature. To estimate renal disease mortality risk from the pooled cohort analysis, MSHA implemented the same life table approach as OSHA. However, MSHA's life table analysis used 2018 all-cause and 1998 background renal mortality rates for U.S. males. The 1998 renal death rates were based on the ICD–9 classification of diseases, 580–589. This is the same classification used by Steenland *et al.* (2002a) to ascertain the cause of death of workers in their study. Consequently, MSHA conducted its analysis of excess ESRD mortality associated with exposure to respirable crystalline silica using background mortality rates for 1998. The U.S. cause-of-death data from 2018 were used as well. Lifetime risk estimates reflect excess risk through age 85. To estimate ESRD mortality risks, MSHA used the log-linear model with log-cumulative exposure that provided the best fit to the pooled cohort data (Steenland *et al.,* 2002a), as EXP(0.269 * ln (cumulative exposure)). The coefficient for this model was 0.269 (SE = 0.120) (OSHA 2013b, page 316).

6. Coal Workers' Pneumoconiosis (CWP)

Exposure to respirable coal mine dust causes lung diseases including CWP, emphysema, silicosis, and chronic bronchitis, known collectively as ''black lung.'' These diseases are debilitating, incurable, and can result in disability and premature death. There are no specific treatments to cure CWP or COPD. These chronic effects may progress even after miners are no longer exposed to coal dust.

MSHA's 2014 coal dust rule quantified benefits among coal miners related to reduced cases of CWP due to lower exposure limits for respirable coal mine dust. In this PRA, MSHA has not quantified the reduction in risk associated with CWP among coal miners. Nonetheless, MSHA believes that the proposed rule would reduce the excess risk of this disease. Many coal

miners work extended shifts, thus increasing their potential exposure to respirable crystalline silica. The result of calculating exposures based on a full-shift 8-hour TWA would be more protective. Thus, the proposed rule is expected to provide additional reductions in CWP risk beyond those ascribed in the 2014 coal dust rule. However, exposure-response relationships based on respirable crystalline silica exposure are not available for CWP, so the reductions in this disease due to reductions in silica exposure cannot be quantified.

D. Overview of Results

Table VI–4 summarizes the PRA's main results: once it is fully effective (and all miners have been exposed only under the proposed PEL), the proposed rule is expected to result in at least 799 avoided deaths and 2,809 avoided cases of silicosis morbidity among the working miner population. These numbers represent the lifetime health outcomes expected to occur after both 45 years of employment under the proposed PEL (from 21 through 65 years of age) and 15 years of retirement (up to 80 years of age). These estimates of the avoided lifetime excess mortality and morbidity represent the final calculations based on the 5 selected models and the observed exposure data. The first group of miners that would experience the avoided lifetime fatalities and illnesses shown in Table VI–4 is the population living 60 years after promulgation of the proposed rule. In other words, this group would only contain miners exposed under the proposed rule. To calculate benefits associated with the proposed rulemaking, the economic analysis monetizes avoided deaths and illnesses while accounting for the fact that, during the first 60 years following promulgation, miners would have fewer avoided lifetime fatalities and illnesses because they would be exposed under both the existing standards and the proposed PEL.

Table VI-4. Lifetime Excess Cases of Death and Illness Avoided Due to Implementation of Proposed Exposure Limit

	Avoided Cases of Death (Mortality) or Illness (Morbidity) by Sector		
Health Outcome	**MNM**	**Coal**	**Total**
Morbidity			
Silicosis (excluding deaths)	2,566	244	2,809
Total	2,566	244	2,809
Mortality			
Silicosis	174	12	186
Lung cancer	56	5	61
NMRD (excluding silicosis deaths)	366	35	402
ESRD	139	12	150
Total	736	63	799

Notes:
Due to rounding, some totals do not exactly equal the sum of the corresponding individual entries.

Table VI–5 summarizes miners' expected percentage reductions in lifetime excess risk of developing or dying from certain diseases due to their reduced respirable crystalline silica exposure expected to result from implementation of the proposed rule. The lifetime excess risk reflects the probability of developing or dying from diseases over a maximum lifetime of 45 years of exposure during employment and 15 years of retirement. The excess risk reduction compares (a) miners' excess health risks associated with respirable crystalline silica exposure at the limits included in MSHA's existing standards to (b) miners' excess health risks associated with exposure at this standard's proposed PEL. MSHA expects full-scale implementation to reduce lifetime excess mortality risk by 9.5 percent and to reduce lifetime excess silicosis morbidity risk by 41.9 percent. Excess mortality risk includes the excess risk of death due to silicosis, NMRD, lung cancer, and ESRD.

Table VI-5. Lifetime Excess Risk Reduction Due to Implementation of Proposed Exposure Limit

	Percentage Reduction in Lifetime Excess Risk of Death (Mortality) or Illness (Morbidity) by Sector		
Health Outcome	**MNM**	**Coal**	**Total**
Morbidity			
Silicosis (excluding deaths)	47.2%	19.2%	41.9%
Total	47.2%	19.2%	41.9%
Mortality			
Silicosis	21.2%	4.9%	17.6%
NMRD (excluding silicosis deaths)	20.8%	5.8%	17.0%
Lung cancer	23.0%	6.3%	19.0%
ESRD	4.2%	0.9%	3.2%
Total	12.0%	1.7%	9.5%

Notes:
Due to rounding, some totals do not exactly equal the sum of the corresponding individual entries.

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Table VI–6 presents MSHA's estimates of lifetime excess risk per 1,000 miners at exposure levels equal to the existing standards, the proposed PEL, and the proposed action level. These estimates are adjusted for FTE ratios and thus utilize cumulative exposures that more closely reflect the average hours worked per year.[21] For an MNM miner who is presently exposed at the existing PEL of 100 μg/m³ (and given the weighted average FTE ratio of 0.87), implementing the proposed PEL would lower the miner's lifetime excess risk of death by 58.8 percent for silicosis, 45.6 percent for NMRD (not including silicosis), 52.0 percent for lung cancer, and 19.9 percent for ESRD. The MNM miner's risk of acquiring a non-fatal case of silicosis (would decrease by 80.4 percent).

For a coal miner who is currently exposed at the existing exposure limit of 85.7 μg/m³ (and given the weighted average FTE ratio of 0.99), implementing the proposed PEL would lower the miner's lifetime excess risk of death by 42.3 percent for silicosis mortality, 40.2 percent for NMRD mortality (not including silicosis), 43.5 percent for lung cancer mortality, and 15.8 percent for ESRD mortality. The coal miner's lifetime excess risk of acquiring non-fatal silicosis would decrease by 73.8 percent. While even greater reductions would be achieved at exposures equal to the proposed action level (25 μg/m³), some residual risks do remain at exposures of 25 μg/m³. Notably, at the proposed action level, ESRD risk is still 20.7 per 1,000 MNM miners and 21.6 per 1,000 coal miners. At the proposed action level, risk of non-fatal silicosis is 16.3 per 1,000 MNM miners and 16.9 per 1,000 coal miners.

[21] The FTE ratios used in these calculations are a weighted average of the FTE ratio for production employees and the FTE ratio for contract miners.

Table VI-6. Lifetime Excess Risk (per 1,000 Miners) for Selected Health Endpoints at Respirable Crystalline Silica Exposure Levels Equal to the Existing Standards, Proposed PEL, and Proposed Action Level

Health Outcome (Study)	MNM			Coal		
	100 µg/m³	50 µg/m³	25 µg/m³	85.7 µg/m³	50 µg/m³	25 µg/m³
Silicosis Morbidity (Buchanan *et al.*, 2003)	206.7	43.6	18.7	189.9	54.2	21.0
Silicosis Morbidity (Net of Silicosis Mortality)[a]	192.4	37.7	16.3	175.9	46.2	16.9
Silicosis Mortality (Mannetje *et al.*, 2002b)	14.3	5.9	2.5	14.0	8.1	4.0
NMRD Mortality (Park *et al.*, 2002)	54.7	27.9	14.1	53.1	31.5	15.9
NMRD Mortality (Net of Silicosis Mortality)[b]	40.4	22.0	11.6	39.1	23.4	11.8
Lung Cancer Mortality (Miller and MacCalman, 2010)	5.5	2.6	1.3	5.3	3.0	1.5
ESRD Mortality (Steenland *et al.*, 2002a)	32.5	26.1	20.7	32.2	27.1	21.6

Notes:
a. The lifetime excess silicosis morbidity risk (net of silicosis mortality) is the difference between (a) the lifetime excess silicosis risk computed from the Buchanan *et al.* model and (b) the lifetime excess risk of silicosis mortality computed from the Mannetje *et al.* model.
b. NMRD (net) mortality risk is the difference between projected total NMRD mortality risk and projected silicosis mortality risk.
c. Values may not sum to total due to rounding.
d. Lifetime excess risk values are based on annual exposure durations that are scaled by a weighted average FTE ratio for contract miners and production employees. For MNM miners, this ratio is 0.87. For coal miners, this ratio is 0.99.

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E. Healthy Worker Bias

MSHA accounted for ''healthy worker survivor bias'' in estimating the risks for coal and MNM miners. The healthy worker survivor bias causes epidemiological studies to underestimate excess risks associated with occupational exposures. As with most worker populations, miners are composed of heterogeneous groups that possess varying levels of background health. Over the course of miners' careers, illness tends to remove the most at-risk workers from the workforce prematurely, thus causing the highest cumulative exposures to be experienced by the healthiest workers who are most immune to risk. Failing to account for this imbalance of cumulative exposure across workers negatively biases risk estimates, thereby underestimating true risks in the population. Keil *et al.* (2018) analyzed a type of healthy worker bias referred to as the healthy worker survivor bias in the context of OSHA's 2016 life table estimates for risk associated with respirable crystalline silica exposure. After analyzing data from 65,999 workers pooled across multiple countries and industries, Keil *et al.* found that the ''healthy worker survivor bias results in a 28% underestimate of risk for lung cancer and a 50% underestimate for other causes of death,'' with risk being defined as ''cumulative incidence of mortality [at age 80].''

Given that MSHA has calculated risks using the same underlying epidemiological studies OSHA used in 2016, the healthy worker survivor bias is likely impacting the estimates in Table VI–6 of lifetime excess risk and lifetime excess cases avoided. Accordingly, as part of a sensitivity analysis, MSHA re-estimated risks for MNM and coal miners to account for the healthy worker survivor bias. MSHA adjusted for this effect by increasing the risk estimates of lung cancer risk by 28 percent and increasing the risk of each other disease by 50 percent. This produced larger estimates of lifetime excess risk reductions and lifetime excess cases avoided, which are presented in PRA Table 23 through PRA Table 26 of the PRA document. As these tables show, when adjusting for the healthy worker survivor bias, the proposed PEL would decrease lifetime silicosis morbidity risk by 20.8 cases per 1,000 MNM miners (compared to the unadjusted estimate of 13.9 cases per 1,000 MNM miners, see PRA Table 15 of the PRA document) and 5.0 cases per 1,000 coal miners (compared to 3.3 cases per 1,000 coal miners, see PRA Table 16 of the PRA document). Still accounting for the healthy worker survivor bias, the proposed PEL would decrease total morbidity by 3,848 lifetime cases among MNM miners (compared to 2,566 cases, see PRA Table 17 of the PRA document) and by 366

lifetime cases among coal miners (compared to 244 cases, see PRA Table 18 of the PRA document). Among the current MNM and coal mining populations, implementation of the proposed PEL during their full lives would have prevented 1,091 deaths and 94 deaths, respectively, over their lifetimes (compared to unadjusted estimates of 736 deaths and 63 deaths, respectively).

MSHA believes adjusted estimates for the healthy worker survivor bias are more reliable than unadjusted estimates. However, given that the literature does not support specific scaling factors for each of the health endpoints analyzed, these adjustments for the healthy worker survivor bias have not been incorporated into the final lifetime excess risk estimates that served as the basis for monetizing benefits. Because the monetized benefits do not account for the healthy worker bias, MSHA believes the reductions in lifetime excess risks and lifetime excess cases, as well as the monetized benefits, likely underestimate the true reductions and benefits attributable to the proposed rule.

F. Uncertainty Analysis

MSHA conducted extensive uncertainty analyses to assess the impact on risk estimates of factors including treatment of data in excess of the proposed PEL, sampling error, and use of average rather than median point estimates for risk. The impact of excluding insufficient mass (weight) samples was also examined.

1. Alternate Treatment of Exposure Samples in Excess of the Proposed Exposure Limit

To estimate excess risks and excess cases under the proposed PEL, MSHA assumed that no exposures would exceed the proposed limit, which effectively reduced any exposures exceeding 50 μg/m^3 to 50 μg/m^3. However, if mines implement controls with the goal of reducing exposures to 50 μg/m^3 on every shift, then some exposure currently in excess of 50 μg/m^3 would likely decrease below the proposed PEL. For this reason, the estimation method of capping all exposure data at 50 μg/m^3 represents a ''lowball'' estimate of risk reductions due to the proposed PEL. In this section, MSHA presents estimates using an alternate ''highball'' method wherein exposures exceeding 50 μg/m^3 are set equal to the median exposure value for the 25–50 μg/m^3 exposure group. Because this highball method attributes larger reductions in exposure to the proposed PEL, it estimates higher lifetime excess risk reductions and more avoided lifetime excess cases.

As with lifetime excess risks, the highball method also yields larger reductions in lifetime excess cases. Using the highball method, MNM miners are expected to experience 3,111 fewer cases of non-fatal silicosis and coal miners are expected to experience 344 fewer cases of non-fatal silicosis over their lifetimes. MNM miners would experience 1,137 fewer deaths and coal miners would experience 123 fewer deaths over their lifetimes. Compared to the lowball method—which estimates that the proposed PEL would prevent a total of 2,809 lifetime cases of non-fatal silicosis and 799 lifetime excess deaths (among both MNM and coal miners)—the highball method estimates totals of 3,445 avoided lifetime cases of non-fatal silicosis and 1,260 avoided lifetime excess deaths.

2. Sampling Error in Exposure Data

To quantify the impact of sampling uncertainty on the risk estimates, 1,000 bootstrap resamples of the original exposure data were generated (sampling with replacement). The resamples were stratified by commodity to preserve the relative sampling frequencies of coal, metal, non-metal, sand and gravel, crushed limestone, and stone observations in the original dataset. Risk calculations were repeated on each of the 1,000 bootstrap samples, thereby generating empirical distributions for all risk estimates. From these empirical distributions, 95 percent confidence intervals were calculated. These confidence intervals characterize the uncertainty in the risk estimates arising from sampling error in the exposure data. All lifetime excess risk estimates had narrow confidence intervals, indicating that the estimates of lifetime excess morbidity and mortality risks have a high degree of precision.

In regard to use of average, rather than median, point estimates of risk, the estimates acquired from average exposures are similar to the estimates from median exposures, with 95 percent confidence intervals having similar widths. However, the 95 percent confidence intervals are not always overlapping, and average exposures tended to yield higher estimates of reduced morbidity and mortality. Among MNM miners, MSHA expects the proposed PEL to produce lifetime risk reductions of silicosis morbidity of 2,546–2,777 using average exposures (see PRA Table 41 of the PRA document), compared to 2,453–2,683 using median exposures (see PRA Table 37 of the PRA document). Among coal miners, this reduction is expected to be 246–279 using average exposures (see PRA Table 42 of the PRA document), compared to 229–265 using median exposures (see PRA Table 38 of the PRA document). The proposed PEL is estimated to reduce lifetime excess mortality by 735–791 MNM miner deaths and 65–73 coal miner deaths using average exposures (see PRA Tables 41 and 42 of the PRA document), compared to 708–764 MNM miner deaths and 60–69 coal miner deaths using median exposures (see PRA Tables 37 and 38 of the PRA document).

3. Samples With Insufficient Mass

The MNM exposure data gathered by enforcement from January 1, 2005, through December 31, 2019, contain samples that were analyzed using the P–2 method. As discussed, the P–2 method specifies that filters are only analyzed for quartz if they achieve a net mass gain of 0.100 mg or more. If cristobalite is requested, a mass gain of 0.050 mg or more is required for a filter to be analyzed (MSHA 2022a). During the 15-year sample period for MNM exposure data, 40,618 MNM samples were not analyzed because the filter failed to meet the P–2 minimum net mass (weight) gain requirements.

Similarly, the coal exposure data gathered by enforcement from August 1, 2016, through July 31, 2021, contains samples that were analyzed using the P–7 method. The P–7 method requires a minimum sample mass of 0.100 mg [22] of dust for the sample to be analyzed for quartz. During the five-year sample period for coal exposure data, 63,127 coal samples were not analyzed because the P–7 method's minimum mass requirement was not met.

For samples that do not meet a minimum threshold for total respirable dust mass, the MSHA lab does not analyze these samples for respirable crystalline silica. These samples were excluded from the risk analysis because their concentrations of respirable crystalline silica are not known. Nonetheless, the unanalyzed samples all had very low total respirable dust mass, making it unlikely that many would have exceeded the existing standards or the proposed PEL. Excluding these unanalyzed samples from the exposure datasets thus may introduce bias, potentially causing the Agency to overestimate the proportion of high-intensity exposure values.

[22] Often the threshold for analyzing Coal samples is ≥0.1 mg. There are, however, some exceptions based on Sample Type and Occupation Code. For samples with Sample Type 4 or 8, if the sample's Occupation Code is not 307, 368, 382, 383, 384, or 386, then the threshold is ≥0.2 mg.

As a sensitivity analysis, MSHA used imputation techniques to estimate the respirable crystalline silica mass for each sample based on the sample weight and the median percent silica content for each commodity and occupation. All the unanalyzed samples with imputed concentrations were estimated to be <25 μg/m³, and thus including these unanalyzed samples in the analysis leads to lower estimates of estimated lifetime excess cases for both MNM and coal miners.

When including the imputed values for the unanalyzed samples, the proposed PEL would result in 1,642 fewer cases of non-fatal silicosis among MNM miners and 128 fewer cases among coal miners, over their lifetimes. The proposed PEL would also result in 469 fewer deaths (due to all 4 diseases) among MNM miners and 34 fewer deaths among coal miners, over their lifetimes. This yields a total reduction of 1,770 in lifetime excess morbidity and of 503 in lifetime excess mortality, respectively. While these estimates are lower than those presented in Table VI–4 (of 2,809 avoided lifetime cases of non-fatal silicosis and 799 avoided lifetime excess fatalities), MSHA nonetheless believes that—even including these unanalyzed samples—the proposed PEL would still reduce the risk of material impairment of health or functional capacity in miners exposed to respirable crystalline silica. Moreover, the possible positive bias that may arise when excluding these samples would be offset by other negative biases discussed herein (*e.g.,* the healthy worker survivor bias and the assumption that full compliance with the proposed PEL would not produce any reductions in exposure below 50 μg/m³).

It should be noted that the imputation method has some limitations. For example, the method assumes that, if the insufficient mass samples had been analyzed, every sample would have possessed a percentage of quartz, by mass, equal to the median percentage for that sample's associated commodity and occupation. (See Section 17.1 of the PRA document for a full discussion of the imputation method.) However, within a given occupation, this percentage varies substantially and is positively correlated with exposure concentration. Suppressing the variation in this percentage quartz, by mass, produces less variation in the resulting imputed concentrations. Consequently, the imputation method may underestimate the number of unanalyzed samples that would truly exceed 50 μg/m³.

VII. Section-by-Section Analysis

MSHA proposes to add a new part 60, titled *Respirable Crystalline Silica,* to title 30 CFR, chapter I, subchapter M—Uniform Mine Health Regulations. Proposed part 60, which would apply to all MNM and coal mines, contains health standards to protect all miners from adverse health risks caused by occupational exposure to respirable crystalline silica (as discussed in the standalone document entitled *Effects of Occupational Exposure to Respirable Crystalline Silica on the Health of Miners* and as summarized in Section V. Health Effects Summary of this preamble). This proposed part establishes a new PEL for respirable crystalline silica for all mines and includes other ancillary provisions to improve methods of compliance, exposure monitoring, corrective actions, respiratory protection, medical surveillance for MNM miners, and recordkeeping. In addition to the new part 60, MSHA proposes to incorporate by reference ASTM F3387–19, *Standard Practice for Respiratory Protection,* to replace its respiratory protection standards under 30 CFR parts 56, 57, and 72 to better protect all miners from airborne contaminants. This section-by-section analysis discusses each provision under the proposed part 60, the conforming amendments related to the proposed part, and the updated respiratory protection standard.

A. Part 60—Respirable Crystalline Silica

MSHA has preliminarily determined that occupational exposure to respirable crystalline silica causes adverse health effects, including silicosis (acute silicosis, accelerated silicosis, simple chronic silicosis, and PMF), NMRD (*e.g.,* emphysema and chronic bronchitis), lung cancer, and renal diseases. MSHA has also preliminarily determined that under the existing standards, miners remain at risk of suffering material impairment of health or functional capacity from these adverse health effects. Each of these effects is exposure-dependent, chronic, irreversible, and potentially disabling or fatal. MSHA has preliminarily concluded that lowering the PEL for respirable crystalline silica to 50 μg/m³ would substantially reduce the health risks to miners.

MSHA proposes to replace its existing standards for respirable crystalline silica or respirable dust containing quartz with a single, uniform health standard for all miners. The proposed uniform standard would establish consistent, industry-wide requirements that directly address the adverse health effects of overexposure to respirable crystalline silica. This proposal would also facilitate mining-industry compliance and help MSHA and other stakeholders provide consistent compliance assistance. MSHA believes this unified regulatory framework for controlling miner exposure to respirable crystalline silica would improve protection for all miners and help the Agency fulfill its obligations under the Mine Act to prevent occupational diseases.

Proposed part 60 includes: Scope and effective date; Definitions; Permissible exposure limit (PEL); Methods of compliance; Exposure monitoring; Corrective actions; Respiratory protection; Medical surveillance for metal and nonmetal miners; Recordkeeping requirements; and Severability.

Detailed discussions of the proposed sections are followed by discussions on conforming amendments and discussions of the proposed update to the respiratory protection standard in parts 56, 57, and 72.

1. Section 60.1—Scope; Effective Date

This section provides that proposed part 60 would take effect 120 days after the final rule is published in the **Federal Register**. Mine operators would be required to comply with the requirements in this part starting on the proposed effective date.

MSHA believes that the proposed 120-day period gives operators the necessary time to plan and prepare for effective compliance with the new standards, while also ensuring that improved protections for miners from the hazards of respirable crystalline silica take effect as soon as practically possible. MSHA believes that it is important to reduce miner exposure to respirable crystalline silica promptly because every exposure at levels above the proposed PEL imposes adverse health risks on miners. However, for implementation to be successful, mine operators need enough time to understand the standard and to prepare for compliance (*e.g.,* by purchasing gravimetric ISO-conforming samplers and/or selecting a commercial laboratory for respirable crystalline silica analysis, if necessary). MSHA believes that the proposed effective date of 120 days would provide enough time for mine operators to take necessary steps to achieve successful compliance. Under the existing standards, both MNM and coal operators have had many years of experience with monitoring and controlling airborne contaminants, including respirable crystalline silica, and this experience should facilitate

implementation of the proposed standard.

2. Section 60.2—Definitions

This section includes the proposed definitions of four terms: ''action level,'' ''objective data,'' ''respirable crystalline silica,'' and ''specialist.''

The term ''action level'' would mean an airborne concentration of respirable silica of 25 micrograms per cubic meter of air (μg/m^3) for a full-shift exposure, calculated as an 8-hour time-weighted average (TWA). The action level sets the level of respirable crystalline silica concentration at or above which operators would be subject to periodic sampling requirements, which are explained in proposed § 60.12. This proposed action level is intended to support operator compliance with the proposed PEL of 50 μg/m^3 by initiating periodic sampling requirements.

The proposed action level of 25 μg/m^3, one-half of the proposed PEL, is consistent with NIOSH research findings and other MSHA standards. According to NIOSH research, wherever exposure measurements are above one-half the PEL, the employer cannot be reasonably confident that the employee is not exposed to levels above the PEL on days when no measurements are taken (NIOSH 1975). MSHA has experience with setting an action level equivalent to 50 percent of the PEL for occupational noise exposure (30 CFR 62.101), applicable to MNM and coal mines, and an action level of 50 percent of the exhaust gas monitoring standards for underground coal mines (30 CFR 70.1900). Based upon Agency experience, MSHA believes these action levels have allowed mine operators to be more proactive in providing necessary protection.

The term ''objective data'' would mean information such as air monitoring data from industry-wide surveys or calculations based on the composition of a substance that indicates the level of miner exposure to respirable crystalline silica associated with a particular product or material or a specific process, task, or activity. Such data must reflect mining conditions closely resembling, or with a higher exposure potential than, the processes, types of material, control methods, work practices, and environmental conditions in the operator's current operations. Some examples of information that would qualify as objective data under this definition include historical MSHA sampling data, NIOSH Health Hazard Evaluations and other published scientific reports, and industry-wide surveys compiled from mines with similar mining conditions, geological composition, work processes, miner tasks, and the same commodities.

''Respirable crystalline silica'' would mean quartz, cristobalite, and/or tridymite contained in airborne particles that are determined to be respirable by a sampling device designed to meet the characteristics for respirable-particle-size-selective samplers that conform to the International Organization for Standardization (ISO) 7708:1995: Air Quality—Particle Size Fraction Definitions for Health-Related Sampling. These characteristics are described further below.

First, the proposed definition would apply to airborne particles that contain collectively or individually, quartz, cristobalite, and/or tridymite, three polymorphs of respirable crystalline silica that may be encountered in mining and for which exposures are addressed in existing MSHA standards. Quartz is the most common polymorph and is present in varying amounts in almost every type of mineral, whereas naturally occurring cristobalite and tridymite are rare.

Second, airborne particles determined to be respirable are those particles capable of entering the gas-exchange region (alveolar region) of the lungs. MSHA's proposed definition would harmonize the Agency's existing practice with current aerosol science and be consistent with the nationally and internationally accepted ISO definition of ''respirable particulate mass'' (*i.e.,* the respirable mass fraction of total airborne particles that can be inhaled through the nose or mouth). ISO 7708:1995 defines conventions for the ''inhalable,'' ''thoracic,'' and ''respirable'' fractions of total airborne particles. The *inhalable* fraction represents the fraction of total airborne particles capable of being inhaled through the nose or mouth. The *thoracic* fraction is the portion of the inhalable particles that pass the larynx and into the airways (trachea) and the bronchial region of the lungs. The *respirable* fraction is the portion of inhalable particles that can enter the gas-exchange region (alveolar region) of the lungs. The ISO 7708:1995 definition of ''respirable particulate mass'' corresponds to particulate matter (respirable dust) that is inhaled and capable of entering the gas-exchange region (alveolar region) of the lungs. MSHA considers this definition to be biologically relevant because exposures to airborne contaminants that are respirable can lead to material impairment of health or functional capacity.[23]

Third, respirable particles are those particles which can be collected by a sampling device designed to meet the characteristics for respirable-particle-size-selective samplers that conform to the ISO 7708:1995 standard. While ''respirable dust'' generally refers to dust particles having an aerodynamic diameter of 10 micrometers (μm) or less, ISO 7708:1995 defines the term more precisely based on the respiratory system's efficiency at collecting different types and sizes of particles. Collection efficiency is represented by particle collection efficiency curves based on the aerodynamic diameter of particles.[24] The ISO 7708:1995 standard uses particle collection efficiency curves to approximate the fraction of respirable particles that can be deposited in the alveolar region of the human respiratory tract. A sampling device that conforms to the ISO 7708:1995 standard would ensure the collection of only respirable particles, including crystalline silica polymorphs.

MSHA believes that the proposed definition of respirable crystalline silica has two main advantages. First, because the ISO 7708:1995 definition of respirable particulate mass represents an international consensus, adoption of the ISO 7708:1995 criterion would allow harmonization with standards used by other occupational health and safety organizations in the U.S. and internationally, including ACGIH, OSHA (29 CFR 1910.1053 and 29 CFR 1926.1153), NIOSH (2003b, Manual of Analytical Methods), and the European Committee for Standardization (CEN) (ISO 7708:1995). Second, the proposed definition would eliminate inconsistencies in the existing standards for MNM and coal mines. Under the proposal, defining respirable crystalline silica to include quartz, cristobalite, and/or tridymite and establishing a PEL for exposure to respirable particles of any combination of these three polymorphs would provide consistency across the different mining sectors. Using samplers that conform to ISO 7708:1995 would allow for uniform collection for these three polymorphs. The proposed streamlined approach would facilitate compliance and provide consistency in the development of best practices and would allow mine operators and MSHA to better promote the health and safety of all miners.

[23] The gas-exchange region of the human lung is the region where the exchange of carbon dioxide and oxygen occurs between the lung and blood and includes the alveoli and respiratory bronchioles.

[24] The ISO 7708:1995 standard defines aerodynamic diameter as the ''diameter of a sphere of density 1 g/cm^3 with the same terminal velocity due to gravitational force in calm air as the particle, under the prevailing conditions of temperature, pressure, and relative humidity.''

''Specialist'' would mean an American Board-Certified Specialist in Pulmonary Disease or an American Board-Certified Specialist in Occupational Medicine. The proposed definition is applicable to proposed § 60.15, which addresses medical surveillance for MNM miners. Under the proposed medical surveillance requirements, which will be discussed later, MNM mine operators would be required to provide miners with medical examinations performed by a specialist in pulmonary disease or occupational medicine or a PLHCP.

3. Section 60.10—Permissible Exposure Limit (PEL)

This section establishes a single, uniform PEL of 50 μg/m³ for respirable crystalline silica for all mines. Under this proposed provision, mine operators would be required to ensure that ''no miner is exposed to an airborne concentration of respirable crystalline silica in excess of 50 μg/m³ for a full-shift exposure, calculated as an 8-hour TWA.'' For coal mines, this proposal would establish a separate PEL for respirable crystalline silica. This proposed PEL would replace the Agency's existing exposure limits for respirable crystalline silica or respirable quartz in 30 CFR parts 56, 57, 70, 71, and 90.

The proposed PEL is consistent with NIOSH's recommended exposure limit for workers and with the PEL for respirable crystalline silica covering U.S. workplaces regulated by OSHA. NIOSH recommended in 1974 that occupational exposure to crystalline silica be controlled so that ''no worker is exposed to a TWA of silica [respirable crystalline silica] greater than 50 μg/m³ as determined by a full-shift sample for up to a 10-hour workday over a 40-hour workweek'' (NIOSH 1974). In 2016, OSHA promulgated a rule establishing that for construction, general industry, and the maritime industry, workers' exposures to respirable crystalline silica must not exceed 50 μg/m³, averaged over an 8-hour day (29 CFR 1910.1053(c); 29 CFR 1926.1153(d)(1)).[25] MSHA's 2014 rule on respirable coal mine dust established that the average concentration of respirable dust in the mine atmosphere during each shift to which each miner is exposed be at or below 1.5 mg/m³, calculated as a TWA, and that coal miners' exposure to respirable crystalline silica be regulated through reductions in the overall respirable dust standard (30 CFR 70.100, 70.101, 71.100, 71.101, 90.100, and 90.101).[26]

As discussed in the Health Effects Summary of this preamble, occupational exposure to respirable crystalline silica is detrimental to an individual's health. Silicosis and other diseases caused by respirable crystalline silica exposure are irreversible, disabling, and potentially fatal. However, these diseases are exposure-dependent and are therefore preventable. The lower a miner's exposure to respirable crystalline silica, the less likely that miner is to suffer from adverse health effects.

As presented in the PRA, MSHA has preliminarily determined that: (1) under existing respirable crystalline silica or quartz standards, miners are exposed to respirable crystalline silica at concentrations that result in a risk of material impairment of health or functional capacity; and (2) that lowering the PEL to 50 μg/m³ would substantially reduce this risk. According to the CDC, between 1999 and 2014, miners died from silicosis, COPD, lung cancer, and NMRD at substantially higher rates than did members of the general population; for silicosis, the proportionate mortality ratio for miners was 21 times as high.[27] Evidence in the standalone Health Effects document demonstrates that exposure to respirable crystalline silica at levels permitted under existing standards contributes to this excess mortality.

In the case of coal mines, the proposed rule would establish a separate PEL for respirable crystalline silica. Under the existing standard, miners' exposure to quartz is tied to exposure to respirable coal mine dust, making it more difficult to monitor coal miners' exposure to respirable crystalline silica. The proposed separate standard would be more transparent and make compliance easier to track, allowing more effective control of respirable crystalline silica.

The proposed PEL of 50 μg/m³ applies to a miner's full-shift exposure, calculated as an 8-hour TWA. Under this proposal, a miner's work shift exposure would be calculated as follows:

$$\frac{\text{Total mass of respirable crystalline silica (}\mu\text{g) collected over a full shift}}{\text{Air flow rate (liters per minute) x 480 min x 0.001 m}^3\text{/L}}$$

Regardless of a miner's actual working hours (full shift), 480 minutes would be used in the denominator. This means that the respirable crystalline silica collected over an extended period (*e.g.,* a 12-hour shift) would be calculated (or normalized) as if it were collected over 8 hours (480 minutes). For example, if a miner was sampled for 12 hours and 55 μg of respirable crystalline silica was collected on the sample, the miner's respirable crystalline silica 8-hour TWA exposure would be 67.4 μg/m³, calculated as follows:

$$\frac{55\ (\mu\text{g})}{1.7\ \text{(liters per minute) x 480 min x 0.001 m}^3\text{/L}}$$

[25] NIOSH conducted a literature review of studies containing environmental data on the harmful effects of exposure to respirable crystalline silica. Based on these studies, and especially fifty years' worth of studies on Vermont granite workers during which time dust controls improved, exposures fell, and silicosis diagnoses neared zero, NIOSH recommended an exposure limit of 50 μg/m³ for all industries. OSHA's examination of health effects evidence and its risk assessment led to the conclusion that occupational exposure to respirable crystalline silica at the previous PELs, which were approximately equivalent to 100 μg/m³ for general industry and 250 μg/m³ for construction and maritime industries, resulted in a significant risk of material health impairment to exposed workers, and that compliance with the revised PEL would substantially reduce that risk. (81 FR at 16755). OSHA considered the level of risk remaining at the revised PEL to be significant but determined that a PEL of 50 μg/m³ is appropriate because it is the lowest level feasible.

[26] For Part 90 miners, MSHA lowered the exposure to respirable coal mine dust during a coal miner's shift to not exceed 0.5 mg/m³.

[27] Data on occupational mortality by industry and occupation can be accessed by visiting the CDC website at *https://www.cdc.gov/niosh/topics/noms/default.html*. The NOMS database provides detailed mortality data for the 11-year period from 1999, 2003 to 2004, and 2007 to 2014. *https://;wwwn.cdc.gov/niosh-noms/industry2.aspx;* accessed November 7, 2022.

This proposed calculation method is the one that MSHA uses to calculate MNM miner exposures to respirable crystalline silica and other airborne contaminants; it differs from the existing method of calculating a coal miner's exposure to respirable coal mine dust. For coal miners, the existing calculation method uses the entire duration of a miner's work shift in both the denominator and numerator, resulting in the total mass of respirable coal mine dust collected over an entire work shift scaled by the sample's air volume over the same period.

MSHA's proposal to apply the existing method of calculating MNM miner exposure to all miners has two main advantages. First, the proposal would improve protection for coal miners who work longer shifts. The goal of the proposed respirable crystalline silica PEL is to prevent miners from suffering a body burden high enough to cause adverse health effects. If a miner works longer than 8 hours, the miner's body (lungs, in particular) may not have sufficient time to eliminate the respirable crystalline silica that enters the lungs or to reduce the body burden.[28] Coal miners commonly work extended shifts, with many working 10-hour or longer shifts.[29] In such cases, a coal miner's recovery time would be reduced from 16 hours to 12 to 14 hours. To account for this increased risk, the proposed calculation (like the current MNM calculation method) normalizes to an 8-hour TWA. The concept of adjusting occupational exposure limits for ''extended shifts'' has been addressed by researchers (Brief and Scala, 1986; Elias, 2013).

Second, applying the proposed calculation method for all miners would be more straightforward and easier to understand for mine operators, miners, and other stakeholders. The current calculation method for coal miners requires first determining the percentage of quartz in the sample of collected respirable dust, then dividing the result into the number 10 to calculate an exposure limit for respirable dust. The proposed calculation method requires only measuring the total mass of respirable crystalline silica collected and dividing it by the air volume over 480 minutes.

This proposal would establish a lower PEL and apply it to all miners using a consistent method for calculating exposures. These changes would improve the health and safety of miners while making compliance more straightforward and transparent. The 8-hour TWA is the ''gold standard'' for exposure assessments, except in scenarios involving chemical substances that are predominantly fast-acting (*i.e.,* those evoking acute effects). NIOSH has also supported the use of the TWA and discussed this term since the publication of the NIOSH Pocket Guide to Chemical Hazards (First Edition, 1973) (the ''White Book'').

4. Section 60.11—Methods of Compliance

This proposed section would require mine operators to install, use, and maintain feasible engineering and administrative controls to keep each miner's exposure to respirable crystalline silica at or below the proposed PEL. Mine operators would be required to use feasible engineering controls as the primary means of controlling respirable crystalline silica; administrative controls would be used, when necessary, as a supplementary control. However, under the proposal, rotation of miners—that is, assigning more than one miner to a high-exposure task or location, and rotating them to keep each miner's exposure below the PEL—would be prohibited. Under the proposal, respiratory protection equipment could be used in specific and limited situations, as discussed in § 60.14—Respiratory Protection, but the use of respiratory protection equipment would not be acceptable as a method of compliance.

This proposed approach to controlling miners' exposures is consistent with MSHA's existing standards, NIOSH's recommendations, and generally accepted industrial hygiene principles. The proposal is consistent with MSHA's existing respirable dust standards, which require engineering controls as the primary means to protect miners. MSHA's experience and data show that engineering controls provide improved, more consistent, and more reliable protection for miners than administrative controls or respirators. In its recommendations, NIOSH also stressed the importance of using engineering controls to control miners' exposure to respirable crystalline silica. In 1995, NIOSH recommended that the dust standard state that ''the mine operator shall use engineering controls and work practices [administrative controls] to keep worker exposures at or below the REL [recommended exposure limit]. . .'' (NIOSH 1995a). In its public response to MSHA's 2019 Request for Information for Respirable Silica (Quartz) (84 FR 45452, Aug. 29, 2019), NIOSH also supported the use of engineering controls as the primary means of protecting miners from exposure to respirable crystalline silica, stating that ''[r]espirators should only be used when engineering control systems are not feasible. Engineering control systems, such as adequate ventilation or scrubbing of contaminants, are the preferred control methods for reducing worker exposures.''[30]

As discussed in the technological feasibility and preliminary regulatory impact analysis sections of the preamble, MSHA has preliminarily determined that engineering and administrative controls are technologically and economically feasible, and the use of these controls would be sufficient to achieve compliance with the proposed PEL. After reviewing the effectiveness of various exposure reduction controls which are currently available and have been successfully adopted in various combinations in mines, MSHA has concluded that all mine operators can ensure miners' exposures are below the proposed PEL through implementing some combination of enhanced

[28] The pulmonary uptake and clearance of respirable crystalline silica are dependent upon many factors, including a miner's breathing patterns, exposure duration, concentration (dose), particle size, and durability or bio-persistence of the particle. These factors will also affect the time to clear particles, even after exposure ceases. Of principal concern is the possibility that a continuous dust exposure over an extended period of time (or high dust level exposure during a short exposure period may excessively tax lung defense mechanisms (Industrial Minerals Association-North America and Mine Safety and Health Administration, 2008).

The ACGIH (2022), while not specifically addressing silica, has stated, ''numerous mathematical models to adjust for unusual work schedules have been described. In terms of toxicologic principles, their general objective is to identify a dose that ensures that the daily peak body burden or weekly peak body burden does not exceed that which occurs during a normal 8-hours/day, 5-day/week shift.'' There are associated concerns with the body burden from an ''unusual work schedule'' such as a 10- or a 12- hour shift. As Elias (2013) stated, ''if the length of the workday is increased, there is more time for the chemical to accumulate, and less time for it to be eliminated. It is assumed that the time away from work will be contamination free. The aim is to keep the chemical concentrations in the target organs from exceeding the levels determined by the TLVs® (8-hour day, 5-day week) regardless of the shift length. Ideally, the concentration of material remaining in the body should be zero at the start of the next day's work.''

[29] Sampling hours of coal mine dust samples approximate the working hours of coal miners who were sampled. According to the coal mine dust samples for a 5-year period (August 2016–July 2021), 90 percent of the samples by MSHA inspectors were from miners working 8 hours or longer and about 43 percent of the samples from miners working 10 hours or longer. The dust samples by coal mine operators show that over 98 percent of them were from miners working 8 hours or longer and over 26 percent from the miners working 10 hours or longer. The coal mine dust samples are available at Mine Data Retrieval System | Mine Safety and Health Administration (MSHA).

[30] Comment from Paul Schulte, NIOSH (Oct. 23, 2019) to Docket No. MSHA 2016–0013.

maintenance of existing engineering controls, new engineering controls, and improved administrative controls/work practices.

a. Engineering Controls

Proposed paragraph (a) would require mine operators to use feasible engineering controls as the primary means of controlling respirable crystalline silica; administrative controls would be used, when necessary, as a supplementary control.

This proposed paragraph would require engineering controls to be used as the primary means of controlling respirable crystalline silica. Engineering controls can include ventilation systems (*i.e.,* main, auxiliary, local exhaust), dust suppression devices (*i.e.,* wet dust suppression and airborne capture), and enclosed cabs or control booths with filtered breathing air, as well as changes in materials handling, equipment used in a process, ventilation, and dust capture mechanisms. Engineering controls generally suppress (*e.g.,* using water sprays, wetting agents, foams, water infusion), dilute (*e.g.,* ventilation), divert (*e.g.,* water sprays, passive barriers, ventilation), or capture dust (*e.g.,* dust collectors) to minimize the exposure of miners working in the surrounding areas. The use of automated ore-processing equipment and use of video cameras for remote scanning and monitoring can also help to reduce or eliminate miners' exposures to respirable crystalline silica.

Engineering controls are the most effective means of controlling the amount of dust to which miners are exposed. They have the advantage of addressing dust at its source, thus ensuring that all miners in an area are adequately protected from overexposure to respirable crystalline silica. Engineering controls provide more consistent and more reliable protection to miners than other interventions because the controls are not dependent on an individual's performance, supervision, or intervention to function as intended. In contrast to other controls and other interventions, engineering controls can also be continually evaluated and monitored relatively easily, allowing their effectiveness to be assessed regularly.

b. Administrative Controls

Under the proposed rule, mine operators would be permitted to supplement engineering controls with administrative controls as a means of controlling exposure to respirable crystalline silica. Administrative controls include practices that change the way tasks are performed to reduce a miner's exposure. These practices would include housekeeping procedures; proper work positions of miners; cleaning of spills; and measures to prevent or minimize contamination of clothing to help decrease miners' exposure to respirable crystalline silica.

Administrative controls require significant effort by mine operators to ensure that miners understand and follow the controls. If not properly implemented, understood, or followed, or if persons responsible for administrative controls do not properly supervise their implementation, they would not be effective in controlling miners' overexposure to respirable crystalline silica. Therefore, administrative controls would be permitted only as supplementary measures, with engineering controls required as the primary means of protection.

Proposed paragraph (b) would prohibit mine operators from using rotation of miners—that is, assigning more than one miner to a high-exposure task or location, and rotating them to keep each miner's exposure below the PEL—as an acceptable method of compliance. MSHA does not believe that rotation of miners is consistent with the Agency's regulatory framework or its mandate under the Mine Act. Based on MSHA's experience, rotation of miners may, if permitted, reduce the amount of time each miner is exposed to the hazard by rotating miners out of the task faster. However, it would increase the number of miners working in high-exposure tasks or areas and would lead to increased material impairment of health or functional capacity for the additional miners.

The concept of miner rotation, which may be an appropriate control to minimize musculoskeletal stress, is not acceptable for work involving carcinogens. Based on NIOSH's publication entitled ''Current Intelligence Bulletin 68: NIOSH Chemical Carcinogen Policy,'' MSHA believes that the primary way to prevent occupational cancer is to reduce worker exposure to chemical carcinogens as much as possible through elimination or substitution at the source and through engineering controls (NIOSH 2017b).

5. Section 60.12—Exposure Monitoring

The proposed section addresses exposure monitoring, sampling method, and sample analysis methods. MSHA is proposing two types of exposure monitoring: quantitative, through sampling the air that miners breathe, and qualitative, through semi-annual evaluations of how changes in mining processes, production activities, and dust control systems affect exposures. For the quantitative monitoring, MSHA is proposing four types of sampling—baseline, periodic, corrective actions, and post-evaluation—together with methods for sampling and analyzing the samples.

The proposed exposure monitoring requirements, which include sampling miners' exposures, would facilitate operator compliance with the proposed PEL, harmonize MSHA's approach to monitoring and evaluating respirable crystalline silica exposures in both MNM and coal mines, and lead to better protection of miners' health. Monitoring miner exposures to airborne contaminants is an effective risk management tool. The sampling and evaluation requirements of proposed § 60.12 are designed to ensure maximum protection for miners and prevent them from suffering material impairment of health or functional capacity, while providing operators flexibility to tailor their sampling program to the miners' risk of exposure to respirable crystalline silica at their mines.

The first type of exposure monitoring under the proposed rule is quantitative sampling for miners' exposures to respirable crystalline silica. This sampling would help mine operators determine the extent and degree of exposures, identify sources of exposure and potential overexposure, maintain updated and accurate records of exposures, select the most appropriate control methods, and evaluate the effectiveness of those controls. The proposal would require operators to conduct sampling for a miner's regular full shift during typical mining activities. The second type of exposure monitoring under the proposed rule would be qualitative evaluations, which would help operators identify changes in mining conditions and processes that affect the exposure risk to miners.

a. Section 60.12(a)—Baseline Sampling

The first action mine operators would take to assess miners' exposures under the proposed rule would be to conduct baseline sampling. Baseline sampling would provide an initial measurement of respirable crystalline silica exposures that would be compared to the proposed action level and the proposed PEL to determine the effectiveness of existing controls and the need for additional controls.

Proposed paragraph (a)(1) would require mine operators to perform baseline sampling to assess the full-shift, 8-hour TWA exposure of respirable crystalline silica for each

miner who is or may reasonably be expected to be exposed to respirable crystalline silica at any level. MSHA assumes that most mining occupations related to extraction and processing would meet the ''reasonably be expected'' threshold; however, MSHA recognizes that some miners may work in areas or perform tasks where exposures are not reasonably likely, and some miners may work in silica-free environments. Based on the Agency's experience, both MNM and coal mine operators generally know from their existing sampling data and MSHA's sampling data the occupations, work areas, and work activities where respirable crystalline silica exposures occur. The mine operator would be required to sample only those miners the operator knows or reasonably expects to be exposed to respirable crystalline silica.

The proposed provisions would require that, within the first 180 days after the effective date of the final rule, the mine operator perform the baseline sampling. During this 180-day period, mine operators would acquire necessary sampling devices or sampling services, sample occupations or areas of known or reasonably expected exposures, identify appropriate laboratories, and arrange for analysis of samples. Given that the mining industry has experience with sampling programs for other airborne contaminants, as well as respirable crystalline silica, MSHA anticipates that the proposed 180 days would provide sufficient time for mine operators to comply with the proposed standard.

Under this proposed standard, mine operators would need to accurately characterize the exposure of each miner who is or may reasonably be expected to be exposed to respirable crystalline silica. As discussed later in detail, mine operators would be permitted to use representative sampling whenever sampling is required. In some cases, however, operators may have to sample all miners to obtain an accurate assessment of exposures.

This proposed requirement would ensure that mine operators have the quantitative information needed to evaluate miners' exposure risks, determine the adequacy of existing engineering and administrative controls, and make necessary changes to ensure miners are not overexposed. In addition, the results of the baseline sampling would determine further operator obligations for periodic sampling. A baseline sample result at or above the proposed action level but at or below the proposed PEL, would require operators to conduct periodic sampling under proposed § 60.12(b). However, if the baseline sample indicated that exposures were below the proposed action level and operators can confirm those results, mine operators would not be required to conduct periodic sampling. The results can be confirmed in three ways: (1) sample data, collected by the operator or the Secretary in the 12 months preceding the baseline sampling, that also shows exposures below the proposed action level; (2) objective data (as defined in the proposal) confirming that a miner's exposure to respirable crystalline silica would remain below the proposed action level; or (3) another sample taken within 3 months showing exposure below the proposed action level.

Proposed paragraph (a)(2) would allow mine operators to use objective data to confirm the baseline sample result. Under this proposal, objective data must demonstrate that respirable crystalline silica would not be released in airborne concentrations at or above the action level under any expected conditions. Objective data, as defined in proposed § 60.2, would include air monitoring data from industry-wide surveys that demonstrate miners' exposure to respirable crystalline silica associated with a particular product or material or a specific process, task, or activity. Objective data must reflect mining conditions that closely resemble the processes, material, control methods, work practices, and environmental conditions in the mine operator's current operations. The mine operator would have the burden of showing that the objective data characterizes miner exposures to respirable crystalline silica with sufficient accuracy.

Also, proposed paragraph (a)(2) would permit mine operators to use sampling conducted by the Secretary or mine operator within the preceding 12 months of baseline sampling to confirm miner exposures below the proposed action level. The proposed rule would require mine operator sampling that was conducted in accordance with sampling requirements in paragraph (f) and analyzed according to paragraph (g) of this section. Under proposed paragraph (a)(2), any subsequent sampling conducted by the operator or by the Secretary, collected within 3 months of the baseline sample, could also be used to confirm a baseline sample result.

MSHA believes that before sampling is discontinued for miners previously determined to be exposed at or above the proposed action level, it is necessary to confirm any sample result that indicates miner exposures are below the proposed action level. When such a result is confirmed by a second measurement, an operator could reasonably expect exposures to remain below the action level if mining conditions and practices do not change. However, as discussed later, under proposed paragraph (d), if there is any change in conditions or practices that could be reasonably expected to result in exposures at or above the action level, sampling to assess these exposures would be required.

b. Section 60.12(b)—Periodic Sampling

Periodic sampling under the proposed rule would provide mine operators and miners with regular information about miners' exposures. Changes in exposure levels can be caused by changes in the mine environment, inadequate engineering controls, or other changes in mining processes or procedures. Periodic sampling would inform mine operators about increases in exposures in a timely manner so they can prevent potential overexposures. In addition, periodic sampling alerts operators and miners of the continued need to protect against the hazards associated with exposure to respirable crystalline silica. If a mine operator installs new engineering controls and/or starts new administrative control practices, periodic sampling would show whether those controls are working properly to achieve the anticipated health results and would document their effectiveness.

Proposed § 60.12(b) would require periodic sampling of miners' exposures to respirable crystalline silica whenever the most recent sampling indicates that exposures are at or above the proposed action level but at or below the proposed PEL. Whether a mine operator would have to conduct periodic sampling under the proposal would depend on the results of the most recent sample, which could include a baseline sample, a corrective actions sample, or a post-evaluation sample, as well as samples taken by MSHA during its inspections. If operators are required to conduct periodic sampling, and periodic sampling results indicate that miner exposures are below the action level, a mine operator would be permitted to discontinue periodic sampling for those miners whose exposures are represented by these samples. If the most recent sample shows exposures at or above the action level but at or below the proposed PEL, periodic sampling every 3 months would continue until two consecutive sample analyses showed miners' exposures below the action level. MSHA believes that two consecutive sample analyses showing exposures below the

action level would indicate a low probability that prevailing mining conditions would result in overexposures.

MSHA believes that the proposed frequency for periodic sampling—repeating the sampling within 3 months—is practical for mine operators and protective of the health and safety of miners. MSHA has preliminarily concluded that the health risks caused by respirable crystalline silica overexposure warrant more regular sampling when exposure levels approach the proposed PEL, because this periodic sampling would provide a higher level of confidence that miners would not be overexposed. Due to the unique conditions of mining environments, where conditions change quickly and exposures to respirable crystalline silica can vary frequently, MSHA is proposing a three-month periodic sampling schedule (NIOSH, 2014e). This three-month schedule would provide a meaningful degree of confidence that mine operators would recognize quickly when exposures are increasing and approaching the proposed PEL and would respond by implementing additional controls to prevent overexposure. Periodic sampling data would also provide information that operators could use to select, implement, and maintain controls. MSHA has structured the proposal to balance the costs of periodic sampling requirements, including when sampling can be stopped, and the benefits of additional health protection for miners. Taking these factors into consideration, MSHA has preliminarily determined that the proposed frequency of periodic sampling is both economically and technologically feasible for mine operators. (See Section VIII. Technological Feasibility and Section IX. Summary of Preliminary Regulatory Impact Analysis.)

As with the baseline sampling in proposed paragraph (a), in meeting the requirements of this paragraph, mine operators would be allowed to sample a representative fraction of at least two miners. The exposure result would be attributed to the remaining miners represented by this sample, as discussed in more detail below. When miners are not performing the same job under the same working conditions, a representative sample would not accurately characterize actual exposures, and individual samples would be necessary.

c. Section 60.12(c)—Corrective Actions Sampling

Under the proposed rule, MSHA would require mine operators to take corrective actions when any sampling shows exposures above the proposed PEL. After such corrective actions, proposed § 60.12(c) would require mine operators to conduct corrective actions sampling to determine whether the control measures taken under proposed § 60.13 have reduced miner exposures to respirable crystalline silica to at or below the proposed PEL. If not, the mine operator would be required to take additional or new corrective actions until subsequent corrective actions sampling indicates miner exposures are at or below the proposed PEL.

Once corrective actions sampling indicates that miner exposures have been lowered to levels at or below the proposed PEL, one of two scenarios could occur. First, if corrective actions sampling taken under proposed § 60.12(c) indicate that miner exposures are at or below the proposed PEL, but at or above the proposed action level, the mine operator would be required to conduct periodic sampling as described in proposed § 60.12(b). The periodic sampling requirements would require mine operators to continue to conduct sampling every three months until two consecutive sampling results indicate miners' exposures are below the action level. Second, if corrective actions sampling taken under proposed § 60.12(c) indicate that miner exposures are below the proposed action level, the mine operator would be required to conduct a subsequent sample within 3 months as described in proposed § 60.12(b); if those results show miners' exposures are below the action level, the mine operator could discontinue periodic sampling.

Sampling after corrective actions would provide operators with specific information regarding the effectiveness of the corrective actions for the mine environment and provide additional data for use in making decisions about updating or improving controls. It would also provide mine operators with an updated profile of miners' exposures against which future samples could be compared.

d. Section 60.12(d) and (e)—Semi-Annual Evaluation and Post-Evaluation Sampling

Historically, MSHA has recognized the importance of qualitatively evaluating changes in mining conditions and processes and assessing the effect of those changes on exposure risk. Operators have general experience with these types of evaluations. The proposed rule would require mine operators to qualitatively evaluate any changes in production, processes, engineering controls, personnel, administrative controls, or other factors including geological characteristics that might result in new or increased respirable crystalline silica exposures, beginning 18 months after the effective date and every 6 months thereafter. Such evaluations could identify changes in miners' exposures to respirable crystalline silica.

The proposed semi-annual evaluation, and post-evaluation sampling, as appropriate, would help confirm that the results of baseline and periodic sampling continue to accurately represent current exposure conditions. These proposed semi-annual evaluation and sampling requirements would also enable mine operators to take appropriate actions to protect exposed miners, such as implementing new or additional engineering controls, and would provide information to miners and their representatives, as necessary. An evaluation could identify a change in operation processes or control measures that might lead to increased exposures to respirable crystalline silica which need to be corrected. Under proposed paragraph (d)(1), the mine operator would be required to make a record of the evaluation, including the date of the evaluation. Under proposed paragraph (d)(2), the mine operator would be required to post the record on the mine bulletin board, and, if applicable, make the evaluation available electronically, for the next 31 days.

Once the evaluation is complete, a mine operator would be required to conduct post-evaluation sampling under proposed § 60.12(e) when the results of the evaluation show that miners may be exposed at or above the action level. Post-evaluation sampling would provide operators with information on whether existing controls are effective, whether additional control measures are needed, and whether respiratory protection is appropriate. When post-evaluation samples indicate that miner exposures are at or above the proposed action level, the mine operator would be required to conduct periodic sampling as described in proposed paragraph (b). Post-evaluation sampling, however, would not be required if the mine operator determines that mining conditions would not reasonably be expected to result in exposures at or above the action level.

e. Section 60.12(f)—Sampling Requirements

Knowledge of typical respirable dust exposure levels is critical to protect the health of miners. The proposed rule includes certain sampling requirements that would ensure mine operators'

respirable crystalline silica monitoring is representative of miners' actual exposures.

(1) Typical Mining Activities and Sampling Device Placement

Proposed paragraph (f)(1) would require mine operators to collect a respirable dust sample for the duration of a miner's regular full shift and during typical mining activities. Many potential sources of respirable crystalline silica are present only when the mine is operating under typical conditions. If a sample is not taken during typical mining activities, the actual risk to the miner may not be known. This proposed requirement would ensure that respirable crystalline silica exposure data accurately reflect actual levels of respirable crystalline silica exposure at miners' normal or regular workplaces throughout their typical workday, even if there are fluctuations in airborne contaminant concentrations during a work shift. As discussed in other sections of this preamble, the sample results from the full shift would be calculated as an 8-hour TWA concentration for comparison with the proposed action level and PEL and for compliance determinations.

This proposed provision is consistent with existing standards and with generally accepted industrial hygiene principles, which recommend taking into consideration the entire duration of time a miner is exposed to an airborne contaminant, even if it exceeds 8 hours. Based on Agency data and experience, MSHA anticipates that operators would not have major challenges in meeting these sampling requirements.

This proposal would continue existing procedures for sampling device placement during sampling. Under proposed § 60.12(f)(2)(i), for MNM miners the regular full-shift, 8-hour TWA exposure would be based on personal breathing-zone air samples. A breathing zone sample is an individual sample that characterizes a miner's exposure to respirable crystalline silica during an entire work shift. More specifically, the sampler remains with the miner for the entire shift, regardless of the task or occupation performed.

For coal miners, under proposed § 60.12(f)(2)(ii), the regular full-shift, 8-hour TWA exposure would be based on an occupational environmental sample collected in compliance with existing standards found in §§ 70.201(c), 71.201(b), and 90.201(b). Under the existing standards, the sampling device would be worn or carried ''portal-to-portal,'' meaning from the time the miner enters the mine until the miner exits the mine. The sampling device would remain with the miner during the entire shift. For shifts that exceed 12 hours, the operator would be required to switch the sampling pump prior to the 13th-hour of operation. However, except in the case of Part 90 miners, if a miner who is being sampled changes positions or duties, the sampling device would remain with the position or duty chosen for sampling (rather than the miner). For Part 90 miners, the sampling device would be operated portal-to-portal and would remain operational with the miner throughout the Part 90 miner's entire shift, which would include the time spent performing normal work duties and the time spent traveling to and from the assigned work location.

(2) Representative Sampling

Under the proposed rule, mine operators must accurately characterize miners' exposure to respirable crystalline silica. In some cases, this would require sampling all exposed miners. In other cases, as proposed in paragraph (f)(3), sampling a ''representative'' fraction of miners would be sufficient. Where several miners perform the same tasks on the same shift and in the same work area, the mine operator could sample a representative fraction of miners. Under this proposed rule, a representative fraction of miners would consist of two or more miners performing the same tasks on the same shift and in the same work area and who are expected to have the highest exposures of all the miners in an area. For example, sampling a representative fraction may involve monitoring the exposure of those miners who are closest to the dust source. The sampling results for these miners would then be attributed to the remaining miners in the group. When miners are not performing the same job under the same working conditions, a representative sample would not be sufficient to characterize actual exposures, and therefore individual samples would be necessary.

MSHA has determined that requiring operators to sample at least two miners as representative, where they perform the same tasks on the same shift and in the same work area as the remaining miners, would be sufficient to ensure that exposures are accurately characterized and health protections are provided. This representative sampling provision of the proposal is similar to the approach that OSHA uses for both general industry (29 CFR 1910.1053(d)(3)) and construction (29 CFR 1926.1153(d)(2)) under the scheduled sampling options.

(3) Sampling Devices

Respirable dust sampling assesses the ambient air quality in mines and evaluates miners' exposure to airborne contaminants. Respirable dust comprises particles small enough that, when inhaled, can reach the gas exchange region of the lung. Measurement of respirable dust exposure is based on the collection efficiency of the human respiratory system and the separation of airborne particles by size to assess their respirable fraction. Proposed paragraph (f)(4) would require mine operators to use sampling devices designed to meet the characteristics for respirable-particle-size-selective samplers that conform to the ISO 7708:1995, ''*Air Quality—Particle Size Fraction Definitions for Health-Related Sampling,*'' Edition 1, 1995–04 to determine compliance with the proposed respirable crystalline silica action level and PEL. MSHA proposes to incorporate by reference ISO 7708:1995, which is the international consensus standard that defines sampling conventions for particle size fractions used in assessing possible health effects of airborne particles in the workplace and ambient environment. Mine operators could use any type of sampling device they wish for respirable crystalline silica sampling, as long as it is designed to meet the characteristics for respirable-particle-size-selective samplers that conform to the ISO 7708:1995 standard and, where appropriate, meets MSHA permissibility requirements.[31]

Sampling devices, such as cyclones[32] and elutriators,[33] can separate the

[31] MSHA's permissibility requirements are specified in 30 CFR parts 18 and 74. Part 18, Electric Motor-Driven Mine Equipment and Accessories, specifies the procedures and requirements for obtaining MSHA approval, certification, extension, or acceptance of electrical equipment intended for use in gassy mines. Part 74, Coal Mine Dust Sampling Devices, specifies the requirements for evaluation and testing for permissibility of coal mine dust sampling devices.

[32] A cyclone is a centrifugal device used for extracting particulates from carrier gases (*e.g.,* air). It consists of a conically shaped vessel. The particulate-containing gas is drawn tangentially into the base of the cone, takes a helical route toward the apex, where the gas turns sharply back along the axis, and is withdrawn axially through the base. The device is a classifier in which only dust with terminal velocity less than a given value can pass through the formed vortex and out with the gas. The particle cut-off diameter is calculable for given conditions.

[33] An elutriator is a device that separates particles based on their size, shape, and density, using a stream of gas or liquid flowing in a direction usually opposite to the direction of sedimentation. The smaller or lighter particles rise to the top (overflow) because their terminal sedimentation velocities are lower than the velocity of the rising fluid.

respirable fraction of airborne dust from the non-respirable fraction in a manner that simulates the size-selective characteristics of the human respiratory tract and that meets the ISO standard. These devices enable collection of dust samples that contain only particles small enough to penetrate deep into the lungs. Size-selective cyclone sampling devices are typically used in the U.S. mining industry. These samplers generally consist of a pump, a cyclone, and a membrane filter. The cyclone uses a rapid vortical flow of air inside a cylindrical or conical chamber to separate airborne particles according to their aerodynamic diameter (*i.e.,* particle size). As air enters the cyclone, the larger particles are centrifugally separated and fall into a grit pot, while smaller particles pass into a sampling cassette where they are captured by a filter membrane that is later analyzed in a laboratory to determine the mass of the respirable dust collected. The pump creates and regulates the flow rate of incoming air. As the flow rate of air increases, a greater percentage of larger and higher-mass particles are removed from the airstream, and smaller particles are collected with greater efficiency. Adjustment of the flow rate changes the particle collection characteristics of the sampler and allows calibration to a specified respirable particle size sampling definition, such as the ISO criterion.

MSHA and many mine operators use cyclone samplers. A cyclone sampler calibrated to operate at the manufacturer's specified air flow rate that conforms to the ISO standard can be used to collect respirable crystalline silica samples under this proposed rule. MSHA reviewed OSHA's feasibility analysis for its 2016 silica final rule and agrees with OSHA that there are commercially available cyclone samplers that conform to the ISO standard and allow for the accurate and precise measurement of respirable crystalline silica at concentrations below both the proposed action level and PEL (OSHA 2016a) Such cyclone samplers include the Dorr-Oliver 10-mm nylon cyclone used by MSHA and many mine operators, as well as the Higgins-Dewell, GK2.69, SIMPEDS, and SKC aluminum cyclone. Each of these cyclones has different operating specifications, including flow rates, and performance criteria, but all are compliant with the ISO criteria for respirable dust with an acceptable level of measurement bias. MSHA's preliminary determination is that cyclone samplers, when used at the appropriate flow rates, can collect a sufficient mass of respirable crystalline silica to quantify atmospheric concentrations lower than the proposed action level and would meet MSHA's crystalline silica sample analysis specifications for samples collected at MNM and coal mines.

MNM mine operators who currently use a Dorr-Oliver 10 mm nylon cyclone could continue to use these samplers at a flow rate of 1.7 L/min, which conforms to the ISO standard, to comply with the proposed requirements. For coal mine operators, the gravimetric samplers previously used to sample RCMD (*i.e.,* coal mine dust personal sampling units (CMDPSUs)) were operated at a 2.0 L/min flow rate. Those CMDPSUs could be adjusted to operate at a flow rate of 1.7 L/min to conform to the ISO standard.

NIOSH's rapid field-based quartz monitoring (RQM) approach is an emerging technology. It provides a field-based method for providing respirable crystalline silica exposure measurements at the end of a miner's shift. With such an end-of-shift analysis, mine operators can identify overexposures and mitigate hazards more quickly. NIOSH Information Circular 9533, ''Direct-on-filter Analysis for Respirable Crystalline Silica Using a Portable FTIR Instrument'' provides detailed guidance on how to implement a field-based end-of-shift respirable crystalline silica monitoring program.[34] The current RQM monitor, however, was designed as an engineering tool; it is not currently designed as a compliance tool with tamper-proof components and is susceptible to interferences which can affect its accuracy. This means that the integrity of the sample cannot be guaranteed, and therefore the monitor cannot be used as a compliance tool. MSHA continues to support NIOSH efforts to develop the RQM monitor for use in mines.

[34] National Institute for Occupational Safety and Health (NIOSH). Direct-on-filter analysis for respirable crystalline silica using a portable FTIR instrument. By Chubb LG, Cauda EG. Pittsburgh PA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 2022–108, IC 9533. *https://doi.org/10.26616/NIOSHPUB 2022108.* The document is intended for industrial hygienists and other health and safety mining professionals who are familiar with respirable crystalline silica exposure assessment techniques, but who are not necessarily trained in analytical techniques. It gives general instructions for setting up the field-based monitoring equipment and software. It also provides case studies and examples of different types of samplers that can be used for respirable crystalline silica monitoring. Guidance on the use, storage, and maintenance of portable IR instruments is also provided in the document.

f. Section 60.12 (g)—Methods of Sample Analysis.

Proposed paragraph (g) specifies the methods to be used for analysis of respirable crystalline silica samples, including details regarding the specific analytical methods to be used and the qualifications of the laboratories where the samples are analyzed. Proposed paragraph (g)(1) would require mine operators to use laboratories that are accredited to the International Organization for Standardization (ISO) or International Electrotechnical Commission (IEC) (ISO/IEC) 17025, ''*General requirements for the competence of testing and calibration laboratories*'' with respect to respirable crystalline silica analyses, where the accreditation has been issued by a body that is compliant with ISO/IEC 17011 ''*Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies.*'' Accredited laboratories are held to internationally recognized laboratory standards and must participate in quarterly proficiency testing for all analyses within the scope of the accreditation.

The ISO/IEC 17025 standard is a consensus standard developed by the International Organization for Standardization and the International Electrotechnical Commission (ISO/IEC) and approved by ASTM International (formerly the American Society for Testing and Materials). This standard establishes criteria by which laboratories can demonstrate proficiency in conducting laboratory analysis through the implementation of quality control measures. To demonstrate competence, laboratories must implement a quality control program that evaluates analytical uncertainty and provides estimates of sampling and analytical error when reporting samples. The ISO/IEC 17011 standard establishes criteria for organizations that accredit laboratories under the ISO/IEC 17025 standard. For example, the American Industrial Hygiene Association (AIHA) accredits laboratories for proficiency in the analysis of respirable crystalline silica using criteria based on the ISO 17025 and other criteria appropriate for the scope of the accreditation.

Many MNM mine operators currently use third-party laboratories to perform respirable crystalline silica sample analyses, and under the proposed standard, MSHA anticipates that they would continue to use third-party laboratories.

For most coal mine operators, using a third-party accredited laboratory to

analyze respirable crystalline silica samples would be a new requirement because respirable coal mine dust samples are currently analyzed only by MSHA. Under the proposed standard, all mine operators would have to use third-party laboratories accredited to ISO/IEC 17025 to have respirable dust samples analyzed for respirable crystalline silica. By requiring all mines to use third-party laboratories, proposed paragraph (g)(1) would ensure that sample analysis requirements and MSHA enforcement efforts are consistent across all mines.

Proposed paragraph (g)(2) would require mine operators to ensure that laboratories evaluate all samples using analytical methods for respirable crystalline silica that are specified by MSHA, NIOSH, or OSHA. These are validated methods currently being cited by third party accredited labs for measuring respirable crystalline silica in mine dust matrices. MSHA and NIOSH have specific FTIR methods for analyzing quartz in coal mine dust. The NIOSH 7603 method is based on the MSHA P–7 method which was collaboratively tested and specifically addresses the interference from kaolinite clay. All three methods, MSHA P–2, NIOSH 7500, and OSHA ID–142 for analyzing respirable crystalline silica using X-ray diffraction (XRD) have similar procedures for measuring respirable crystalline silica and are capable of distinguishing between the three silica polymorphs. Additional steps such as acid treatment can be taken to remove respirable crystalline silica interferences from other minerals that can be found in mine dust sample matrices. Consistent with MSHA's current practices for the analysis of respirable crystalline silica samples, analytical techniques used for samples from MNM mines and coal mines would generally be different due to potential sources of interference and cost considerations. Under the proposed rule, as discussed below, MSHA expects that samples collected in MNM mines would continue to be analyzed by X-ray diffraction (XRD) and samples collected for coal mines would continue to be analyzed by Fourier transform infrared spectroscopy (FTIR).

Coal mine samples are currently analyzed using the FTIR method because it is cheaper, faster, and better suited for the coal mining sector, where samples contain little or no minerals that could interfere or confound respirable crystalline silica analysis results. Current FTIR methods, however, cannot quantify quartz if either of the other two forms of crystalline silica (cristobalite and tridymite) are present in the sample. Unlike coal dust samples, MNM samples may have a variety of minerals present, which could cause interference with respirable crystalline silica measurements if FTIR were used. Thus, MNM samples are currently analyzed by XRD because the XRD method can distinguish and isolate respirable crystalline silica for measurement, thereby avoiding interference or confounding of respirable crystalline silica analysis results. The XRD method could be used for both MNM and coal samples but using the XRD method is more time consuming and more costly, with no additional benefit for coal mine sample analysis. For this reason, MSHA does not expect the use of XRD on samples from coal mines.

For MNM samples, the methods used for respirable crystalline silica sample analysis using XRD include MSHA P–2, NIOSH 7500, and OSHA ID–142. For coal samples, the methods used for respirable crystalline silica sample analysis using FTIR include MSHA P–7, NIOSH 7602, and NIOSH 7603. (OSHA does not currently have an established FTIR method for analysis of respirable crystalline silica.)

g. Section 60.12 (h)—Sampling Records

Proposed paragraph (h) would establish requirements for sampling records, including what mine operators would be required to do after receiving the analytical reports from laboratories. For each sample taken, this proposed paragraph would require mine operators to create a record that includes the sample date, the sampled occupations, and the reported concentrations of both respirable dust and respirable crystalline silica. After making such a record, the mine operator would be required to post the record, together with the laboratory report, on the mine bulletin board and, if applicable, make the record and the laboratory report available electronically, for the next 31 days upon receipt.

When electronic means are available, mine operators would be required to use those electronics means such as electronic bulletin boards or newsletters, in addition to physically posting the sampling record and laboratory report on the mine bulletin board. MSHA believes that most mines have the ability to display this information electronically. For any mines where electronic means are not available, mine operators would only be required to physically post the sampling record and laboratory report on the mine bulletin board. Also, as required in proposed § 60.16(b), the sampling records created under this section may be requested at any time by, and must promptly be made available to, miners, authorized representatives of miners, or an authorized representative of the Secretary.

MSHA believes that the posted information including sampling results and methodology and other relevant information would inform miners of the sampled exposures and would encourage them to have heightened awareness of potential health hazards that could impact not only them but other miners. It would also provide them with knowledge to take proactive actions to protect themselves and fellow miners through better and safer work practices and more active participation in health and safety programs. This is consistent with the Mine Act which states that mine operators, with the assistance of miners, have the responsibility to prevent the existence of unsafe and unhealthful conditions and practices in mines. 30 U.S.C. 801(e). Making miners aware that respirable crystalline silica exposures below the PEL may still pose a health risk could encourage them to take steps to manage their health risks.

6. Section 60.13—Corrective Actions

This proposed section includes several actions a mine operator would be required to take to protect miners' health and safety when any sampling result indicates that a miner's exposure to respirable crystalline silica exceeds the proposed PEL. Proposed paragraph (a)(1) would require the mine operator to make NIOSH-approved respirators available to affected miners before the start of the next work shift. Proposed paragraph (a)(2) would require mine operators to ensure that affected miners wear respirators for the full shift or during the period of overexposure to protect miners until miner exposures are at or below the PEL.

Proposed paragraph (a)(3) would require operators to take immediate corrective actions to lower the concentration of respirable crystalline silica to levels at or below the PEL. Some examples of corrective actions include increasing air ventilation and/or water flow rates, adding more water sprays, and improving maintenance of the existing engineering controls.

Once corrective actions have been taken, proposed paragraph (a)(4)(i) would require the operator to conduct sampling in accordance with § 60.12(c) to determine if the corrective actions have been successful in lowering exposures to at or below the PEL. If sampling indicates that the corrective actions did not reduce miner exposures to at or below the PEL, proposed

paragraph (a)(4)(ii) would require the operator to implement additional or new corrective actions until sampling indicates miner exposures are at or below the PEL.

Proposed § 60.13(b) would require the mine operator to make a record of corrective actions required under proposed paragraph (a) of this section and the dates of those actions. These records would help the operator and MSHA identify whether existing controls are effective, or whether maintenance or additional control measures are needed.

7. Section 60.14—Respiratory Protection

This proposed provision addresses the use of respiratory protection equipment. As noted earlier, the use of respiratory protection equipment, including powered air-purifying respirators (PAPRs), would not be permitted as a control to achieve compliance with the proposed PEL because engineering controls are more effective than respirators in protecting miners. However, temporary non-routine use of respirators would be allowed under limited circumstances.

Proposed paragraph (a) would require the mine operator to provide respirators to miners as a temporary measure in accordance with proposed paragraph (c) of this section, when miners are working in concentrations of respirable crystalline silica above the PEL under specific, limited circumstances. Proposed paragraph (a)(1) would require the temporary use of respirators when miners' exposures exceed the proposed PEL during the development and implementation of engineering controls.

Proposed paragraph (a)(2) would require the use of respirators for temporary, nonroutine work to prevent miners' exposures at levels above the proposed PEL. Examples include when a miner is mixing cement to build a stopping to separate a main intake from return airways or is engaged in an unplanned entry into an atmosphere with excessive respirable crystalline silica concentrations to perform a repair or investigation that must occur before feasible engineering or administrative controls can be implemented.

The proposal is consistent with NIOSH's recommendation in the 1995 Criteria Document (NIOSH 1995a) and is similar to the existing standards for MNM and coal mines. NIOSH (1995a) recommended the use of respirators as an interim measure when engineering controls and work practices are not effective in maintaining worker exposures for respirable crystalline silica at or below the proposed PEL.

MSHA's existing MNM standards in parts 56 and 57 permit mine operators to allow miners to work for reasonable periods of time protected by appropriate respiratory protection in locations where concentrations of contaminants (including respirable crystalline silica) exceed permissible levels and where feasible engineering control measures have not been developed or where necessary by the nature of the work involved (*e.g.,* occasional entry into hazardous atmospheres to perform maintenance or investigation). MSHA's existing standards for respirable coal mine dust require the mine operator to make respiratory protection equipment available while the operator evaluates and implements engineering control measures when a valid sample meets or exceeds the applicable standard during operator exposure monitoring. (30 CFR 70.208(e)(1); 30 CFR 71.206(h)(1); 30 CFR 72.700–72.701; 30 CFR 90.207(c)(1)).

Proposed paragraph (b) addresses situations where miners are not able to wear a respirator while working. Proposed paragraph (b) would require the mine operator, upon written notification by a PLHCP, to transfer an affected miner who is unable to wear a respirator to work in another area of the same mine, or to another occupation at the same mine, where respiratory protection is not required.

The operator must ensure that the occupation and the area of the mine to which the miner is temporarily transferred do not expose the miner to respirable crystalline silica above the proposed PEL. Proposed paragraph (b)(1) would require the mine operator to continue to compensate the affected miner at no less than the regular rate of pay in the occupation held by that miner immediately prior to the transfer. Under proposed paragraph (b)(2), the miner may be transferred back to the initial work area or occupation when the temporary, non-routine use of respirators is no longer required.

MSHA believes that this proposed provision is consistent with the mandate in the Mine Act to provide the maximum health protection for miners. Also, any effect on miners by this provision should be temporary since the concentration of respirable crystalline silica to which the miner would be exposed must be controlled through feasible engineering and administrative controls on a long-term basis.

Proposed paragraph (c) includes the respiratory protection requirements that an operator must address when providing respirators to miners. Proposed paragraph (c)(1), like the existing standards in parts 56, 57, and 72, would require mine operators to provide respiratory protection equipment approved by NIOSH under 42 CFR part 84. Whenever respirators are used by miners, proposed paragraph (c)(1) would require the mine operator to provide miners with NIOSH-approved atmosphere-supplying respirators or air-purifying respirators. Atmosphere-supplying respirators provide clean breathing air from a separate source (*e.g.,* a self-contained air tank), whereas air-purifying respirators use filters, cartridges, or canisters to remove contaminants from the air.

In mines, commonly used types of air-purifying respirators include elastomeric respirators, filtering facepiece respirators (FFRs), and PAPRs. Elastomeric respirators, such as half-facepiece or full-facepiece tight-fitting respirators, are made of synthetic or natural rubber material and can be cleaned, disinfected, stored, and repeatedly re-used. FFRs (*i.e.,* dust masks), designed to cover areas of the wearer's face from the bridge of the nose to the chin, are disposable respirators composed of a weave of electrostatically charged synthetic filter fibers and an elastic head strap. PAPRs utilize a blower to move ambient air through an air-purifying filter that removes particulates and delivers clean air to the wearer. When air-purifying respirators (elastomeric respirators, FFRs, and PAPRs) are used, under proposed paragraph (c)(1), the mine operator would be required to select only high-efficiency NIOSH-certified particulate protection (*i.e.,* 100 series or HE filters) for respirable crystalline silica protection. A 100 series and high efficiency filter means that the filter must demonstrate a minimum efficiency level of 99.97 percent (*i.e.,* the filter is at least 99.97 percent efficient in removing particles of 0.3 μm aerodynamic mass median diameter).

Under proposed paragraphs (c)(1)(i) through (c)(1)(ii), air-purifying respirators would be required to be equipped with one of the following three particulate protection types: (1) particulate protection defined as a 100 series under 42 CFR part 84; or (2) particulate protection defined as High Efficiency ''HE'' under 42 CFR part 84. MSHA believes that air-purifying respirators with the highest efficiency NIOSH classifications for particulate protection are most suitable in protecting miners from occupational exposure to a carcinogen such as respirable crystalline silica.

Proposed paragraph (c)(2) would require mine operators to follow the provisions, as applicable, of ASTM F3387–19, ''*Standard Practice for*

Respiratory Protection,'' when respiratory protection equipment is needed. Under the proposal, MSHA would require that the respiratory program would be in writing and would include the following minimally acceptable program elements: program administration; standard operating procedures; medical evaluations; respirator selection; training; fit testing; and maintenance, inspection, and storage. Beyond the minimally acceptable program elements, mine operators would be allowed to comply with the provisions of the 2019 ASTM standard that they deem applicable. The need for temporary non-routine use of respirators may vary, given the variability of mining processes, activities, and commodities that are mined. MSHA believes that flexibility afforded to mine operators under this paragraph may lead mine operators to focus more appropriately on those provisions that are relevant to their mine-specific situations, allowing them to comply more efficiently and effectively.

ASTM F3387–19 is a voluntary consensus standard published by ASTM International and was approved in 2019. MSHA proposes to incorporate by reference this consensus standard for two reasons.

First, adopting this voluntary consensus standard is consistent with OMB Circular A–119, which encourages Federal agencies to ''minimize reliance on government-unique standards where an existing standard would meet the Federal government's objective.'' ASTM F3387–19 comprehensively addresses all aspects of establishing, implementing, and evaluating respiratory protection programs, and describes respiratory protection program elements which include: program administration; standard operating procedures; medical evaluation; respirator selection; training; fit testing; and respirator maintenance, inspection, and storage.

Second, ASTM F3387–19 reflects current respirator technology and an up-to-date understanding of effective respiratory protection. For example, ASTM F3387–19 provides detailed information on respirator selection that are based on NIOSH's long-standing experience of testing and approving respirators for occupational use and OSHA's research and rulemaking on respiratory protection.

More detailed discussion on ASTM F3387–19 is provided later in *C. Updating MSHA Respiratory Protection Standards: Proposed Incorporation of ASTM F3387–19 by Reference.*

8. Section 60.15—Medical Surveillance for Metal and Nonmetal Miners

This proposed provision would require MNM mine operators to provide mandatory medical examinations to miners who begin in the mining industry after the effective date of the rule and offer voluntary periodic examinations to all other miners. These medical examinations would be provided by a PLHCP or specialist. The proposed requirements in this section are consistent with the Mine Act's mandate to provide maximum health protection for miners and provide MNM miners with information needed for early detection of respirable crystalline silica-related disease, resulting in prevention of disabling disease.

The proposed requirements for MNM mine operators are also generally consistent with existing medical surveillance requirements for coal mine operators under 30 CFR 72.100 although the requirements differ in some respects. For example, the proposed provision specifies that medical examinations must be provided by a PLHCP or specialist, while the existing medical surveillance requirements for coal miners in § 72.100 coordinate with the surveillance system managed by NIOSH's Coal Workers' Health Surveillance Program (CWHSP) which works with coal mine operators under NIOSH regulations to provide medical surveillance. Proposed paragraph 60.15(a) would require that each MNM mine operator make medical examinations available to each MNM miner, at no cost to the miner, regardless of whether miners are reasonably expected to be exposed to any level of respirable crystalline silica. This proposed requirement is consistent with section 101(a)(7) of the Mine Act.

Proposed paragraph 60.15(a) would also require medical examinations to be performed by a PLHCP or specialist. A PLHCP is an individual whose legally permitted scope of practice (*i.e.,* license, registration, or certification) allows that individual to independently provide or be delegated the responsibility to provide some or all of the required health services (*i.e.,* chest X-rays, spirometry, symptom assessment, and occupational history). A specialist, as defined in proposed § 60.2, refers to an American Board-certified specialist in pulmonary disease or occupational medicine. The Agency believes it is appropriate to allow not only a physician, but also any State-licensed health care professional, to perform the required medical examinations. This would provide operators with the flexibility needed to use professionals with necessary medical skills and minimize cost and compliance burdens.

Proposed paragraph (a)(1) requires periodic examinations to be offered to all MNM miners at the frequencies specified in this section. Proposed paragraph (a)(2) specifies the types of medical examinations and is consistent with the existing requirements for coal mine operators under existing § 72.100.

Proposed paragraphs (a)(2)(i) and (ii) would require MNM operators to provide each miner with a medical examination that includes a review of the miner's medical and work history and a physical examination. The medical and work history would cover a miner's present and past work exposures, illnesses, and any symptoms indicating respirable crystalline silica-related diseases and compromised lung function. The medical and work history should focus not only on any history of tuberculosis, smoking, or exposure to respirable crystalline silica, but also on any diagnoses and symptoms of respiratory system dysfunction, including shortness of breath, coughing, or wheezing. The physical examination under (a)(2)(ii) would be focused on the respiratory tract. For the reasons stated above, these proposed requirements differ from the existing requirements for coal miners. The existing medical surveillance requirements for coal miners in 42 CFR 37 specify standardized data collection elements for occupational histories and respiratory symptom assessment while proposed paragraphs (a)(2)(i) and (ii) specify a respiratory-focused history and physical examination by a clinician.

Under proposed paragraph (a)(2)(iii), MSHA would require all medical examinations to include a chest X-ray. The required chest X-ray is a posterior/anterior view no less than 14 x 17 inches and no more than 16 x 17 inches at full inspiration, recorded on either film or digital radiography systems. The chest X-ray must be classified by a NIOSH-certified B Reader, in accordance with the Guidelines for the Use of the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses. The ILO recently made additional standard digital radiographic images available and has published guidelines on the classification of digital radiographic images (ILO 2022). This is a standard practice in pneumoconiosis surveillance programs and can potentially detect other respirable crystalline silica-related conditions, including lung cancer (Industrial Minerals Association-North America and Mine Safety and Health Administration, 2008). The test would provide data that can be used to assess

for progression of silicosis and for other respirable crystalline silica-related conditions in MNM miners.

MSHA preliminarily concludes that the number of B readers in the U.S. is adequate to classify chest X-rays conducted as part of the respirable crystalline silica rule (OSHA 2016a, 81 FR 16286, 16821). As discussed in OSHA's 2016 final silica rule, the number of B Readers is driven by supply and demand created by a free market, and many physicians choose to become B readers based on demands for such services (OSHA 2016a, 81 FR 16286, 16822). NIOSH is also able to train enough B readers to handle any potential increase in demand, providing several pathways for physicians to become B readers, such as free self-study materials by mail or download and free B reader examinations (OSHA 2016a, 81 FR 16286, 16822). In addition, courses and examinations for certification are periodically offered for a fee through the American College of Radiology (OSHA 2016a, 81 FR 16286, 16822). Even if B readers are scarce in certain geographical locations, digital X-rays can be easily transmitted electronically to B readers located anywhere in the U.S. (OSHA 2016a, 81 FR 16286, 16822).

Under proposed paragraph (a)(2)(iv), MSHA would require that pulmonary function testing (including spirometry) be part of every medical examination. The pulmonary function test must be administered by a spirometry technician with a current certificate from a NIOSH-approved Spirometry Training Sponsorship. The purpose of spirometry is to measure baseline lung function followed by periodic tests to detect early impairment patterns, such as obstruction of air flow and restriction caused by underlying respiratory disease. This measurement can provide critical information for the primary, secondary, and tertiary prevention of workplace-related lung diseases, including respirable crystalline silica-related diseases. The use of spirometry is consistent with recommendations of the Dust Advisory Committee (U.S. DOL, 1996) and the NIOSH Criteria Document (1974). Indeed, NIOSH (2014a) notes that properly conducted spirometry should be part of a comprehensive workplace respiratory health program. Spirometry and chest X-rays are complementary examinations for detecting adverse health effects from respirable crystalline silica exposures.

In order to maintain a certificate from a NIOSH-approved course, technicians must complete an initial training and then refresher training every five years (OSHA 2016a, 81 FR 16286, 16825). As discussed in OSHA's 2016 silica final rule, course sponsors are located throughout the U.S. and some sponsors will travel to a requested site to teach a course (OSHA 2016a, 81 FR 16286, 16825). One NIOSH-approved sponsor offers instructor-led live virtual initial training. Several live virtual and web-based refresher training options are also available. Because the required training is not too frequent and course sponsors appear to be widely available throughout the U.S., MSHA preliminarily concludes that the requirement that technicians maintain a certificate from a NIOSH-approved course will not impose substantial burdens on providers of spirometry testing.

MSHA believes that the proposed medical examinations consisting of a medical and work history, a physical examination, a chest X-ray, and a spirometry test would help medical professionals identify early symptoms of respirable crystalline silica-related diseases, assist MNM miners in protecting their health, and lower the risk that MNM miners become materially impaired due to occupational exposure to respirable crystalline silica.

Under proposed paragraph (b), MSHA would require MNM mine operators to provide every miner employed at MNM mines with the opportunity to have periodic medical examinations. Miner participation would be voluntary, as in the case of the examination requirement for coal miners in 30 CFR 72.100(b). Starting on the proposed effective date, mine operators must provide the opportunity for an examination to MNM miners no later than 5 years after the date of their last medical surveillance examination, and in addition, during a 6-month period that begins no less than 3.5 years and not more than 4.5 years from the end of the last 6-month period for medical examinations. Periodic examinations would allow for comparisons with a miner's prior examination results, help detect respirable crystalline silica-related disease including silicosis, and address further progression of existing respiratory disease. If a miner has a positive chest X-ray (ILO category of 1/0+), it is important to intervene as promptly as possible for maximum health protection. In addition, an interval of 5 years or less between each miner's periodic examinations can ensure detection of declines in a miner's lung function due to potential occupational exposure. MSHA believes that the proposed schedule, which is consistent with the periodic examination for coal miners required under § 72.100(b), would provide MNM mine operators with flexibility in offering examinations to miners.

Proposed paragraph (c) would require MNM mine operators to provide a mandatory initial medical examination for each MNM miner who is new to the mining industry. Consequently, if a miner had previous mining experience (such as working in a coal mine) and subsequently came to work in an MNM mine, MSHA would not require that the MNM mine operator provide the miner with an initial examination after the miner begins employment. Mandatory initial examinations would be conducted when miners are first hired in the mining industry and would provide an individual baseline of each miner's health status. This initial examination would assist in the early detection of respirable crystalline silica-related illnesses and conditions that may make the miner more susceptible to the toxic effects of respirable crystalline silica. The individual baseline would also be valuable in assessing any future health changes in each miner. Overall, the initial examination results would enable miners to respond appropriately to information about their health status.

Proposed paragraph (c)(1) would require that the mandatory initial medical examination occur no later than 30 days after a miner new to the industry begins employment. Proposed paragraphs (c)(2) and (3) would require MNM mine operators to provide mandatory follow-up examinations to new miners who were eligible for an initial mandatory medical examination under proposed paragraph (c). MSHA believes follow-up examinations are important for assessments of any changes in a new miner's health status and for future diagnoses.

Under proposed paragraph (c)(2), MSHA would require that the mine operator provide a mandatory follow-up examination to the miner no later than 3 years after the miner's initial medical examination. Under proposed paragraph (c)(3), if a miner's 3-year follow-up examination shows evidence of a respirable crystalline silica-related disease or decreased lung function, the operator would be required to provide the miner with another mandatory follow-up examination with a specialist, as defined in proposed § 60.2, within 2 years. This proposed requirement is intended to ensure that any miner whose follow-up medical examination shows evidence of silicosis or evidence of decreased lung function, as determined by the PLHCP or specialist, is seen by a professional with expertise in respiratory disease. This would ensure that miners would benefit from not only expert medical judgment but

also counseling regarding work practices and personal habits that could affect the miners' health. For the reasons stated above, this proposed requirement differs from the existing requirements for coal miners, which provides for follow up surveillance testing but does not include interaction with a PLHCP or specialist.

Proposed paragraph (d) would require that the results of any medical examination performed under this section be kept confidential and provided only to the miner. The miner is also entitled to request that the medical examination results be provided to the miner's designated physician. Based on MSHA's experience with coal miners' medical surveillance, the Agency believes that confidentiality regarding medical conditions is essential and that it encourages miners to take advantage of the opportunity to detect early adverse health effects due to respirable crystalline silica. *See* 79 FR 24813, at 24928, May 1, 2014.

Under proposed paragraph (e), MNM mine operators would be required to obtain a written medical opinion from a PLHCP or specialist within 30 days of the medical examination that includes only the date of a miner's medical examination, a statement that the examination has met the requirements of this section, and any recommended limitations on the miner's use of respirators. This would allow the mine operator to verify the examination has occurred and would provide the mine operator with information on miners' ability to use respirators. Proposed paragraph (f) would require the mine operator to maintain a record of the written medical opinions obtained from the PLHCP or specialist under proposed paragraph (e).

9. Section 60.16—Recordkeeping Requirements.

Section 60.16 lists all the proposed recordkeeping requirements under this proposed part. To ensure that mine operators track actual or potential exposures, risks, and controls and keep miners, miners' representatives, and other stakeholders informed about them, the proposed part 60 establishes five recordkeeping requirements. Discussion of these requirements follow and are summarized in table 1 to paragraph (a) in § 60.16 of the rule text.

First, this section would require that, once mine operators complete the sampling or semi-annual evaluations required under proposed § 60.12, the operators retain the associated exposure monitoring records for at least 2 years. Examples of exposure monitoring records include the date of sampling or evaluation, names and occupations of miners who were sampled, description of sampling or evaluation method, and laboratory reports of sampling analysis. The 2-year period would give mine operators sufficient exposure monitoring data to evaluate the effectiveness of their engineering and administrative controls over different mining and weather conditions.

Second, mine operators would also be required to retain records of corrective actions made under proposed § 60.13(b) for at least 2 years from the date when each corrective action was taken. This proposed requirement is similar to the recordkeeping requirements related to other corrective-action requirements under parts 56 and 57 (for MNM mines) and parts 70, 71, and 90 (for coal mines).

Third, this proposed section would require mine operators to maintain any written determination records that they receive from a PLHCP or specialist. When a PLHCP or specialist certifies in writing that a miner cannot wear a respirator, including a PAPR, that miner must be temporarily transferred to a different work area or task where respiratory protection is not required (or needed). In such cases, mine operators would be required to retain the written determinations by a PLHCP or specialist for the duration of the miner's employment plus 6 months.

Fourth, under this section, MNM mine operators would be required to maintain written medical opinion records that they obtain from a PLHCP or specialist who conducts medical examinations of their miners under proposed § 60.15. This proposed recordkeeping requirement would apply only to MNM mine operators. Under proposed § 60.15, after the examination has taken place, the MNM mine operator would receive from the PLHCP or specialist a written medical opinion that contains the date of the medical examination, a statement that the examination has met the requirements under this proposed rule, and any recommended limitations on the miner's use of respirators. Upon receipt, the mine operator would retain the medical opinion for the duration of the miner's employment plus 6 months.

Proposed paragraph (b) would ensure that all the listed records would be made available promptly upon request to miners, authorized representatives of miner(s), and authorized representatives of the Secretary of Labor.

10. Section 60.17—Severability

The severability clause under proposed § 60.17 serves two purposes. First, it expresses MSHA's intent that if any section or provision of the *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* rule—including its conforming amendments in sections of 30 CFR parts 56, 57, 70, 71, 72, 75, and 90 that address respirable crystalline silica or respiratory protection—is held invalid or unenforceable or is stayed or enjoined by any court of competent jurisdiction, the remaining sections or provisions should remain effective and operative. Second, the severability clause expresses MSHA's judgment, based on its technical and scientific expertise, that each individual section and provision of the rule can remain effective and operative if some sections or provisions are invalidated, stayed, or enjoined. Accordingly, MSHA's inclusion of this severability clause addresses the twin concerns of Federal courts when determining the propriety of severability: identifying agency intent and clarifying that any severance will not undercut the structure or function of the rule more broadly. *Am. Fuel & Petrochem. Mfrrs.* v. *Env't Prot. Agency,* 3 F.4th 373, 384 (D.C. Cir. 2021) (''Severability 'depends on the issuing agency's intent,' and severance 'is improper if there is substantial doubt that the agency would have adopted the severed portion on its own' '') (quoting *North Carolina* v. *FERC,* 730 F.2d 790, 796 (D.C. Cir. 1984) and *New Jersey* v. *Env't Prot. Agency,* 517 F.3d 574, 584 (D.C. Cir. 2008)).

Under the principle of severability, a reviewing court will generally presume that an offending provision of a regulation is severable from the remainder of the regulation, so long as that outcome appears consistent with the issuing agency's intent, and the remainder of the regulation can function independently without the offending provision. See *K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281, 294 (1988) (invalidating and severing subsection of a regulation where it would not impair the function of the statute as a whole and there was no indication the regulation would not have been passed but for inclusion of the invalidated subsection). Consequently, in the event that a court of competent jurisdiction stays, enjoins, or invalidates any provision, section, or application of this rule, the remainder of the rule should be allowed to take effect.

B. Conforming Amendments

The proposed rule would require conforming amendments in 30 CFR parts 56, 57, 70, 71, 72, 75, and 90 based on the proposed new part 60.

1. Part 56—Safety and Health Standards—Surface Metal and Nonmetal Mines

a. Section 56.5001—Exposure Limits for Airborne Contaminants

For respirable crystalline silica, proposed part 60 would establish exposure limits and other related requirements for all mines. Existing paragraph (a) of § 56.5001 governs exposure limits for airborne contaminants, except asbestos, for surface MNM mines. MSHA is proposing to amend paragraph (a) of § 56.5001 to add respirable crystalline silica as an exception. The amended paragraph (a) of § 56.5001 would govern exposure limits for airborne contaminants other than respirable crystalline silica and asbestos for surface MNM mines.

2. Part 57—Safety and Health Standards—Underground Metal and Nonmetal Mines

a. Section 57.5001—Exposure Limits for Airborne Contaminants

Existing paragraph (a) of § 57.5001 governs exposure limits for airborne contaminants, except asbestos, for underground MNM mines. Similar to the proposed changes discussed above for § 56.5001, MSHA is proposing to amend paragraph (a) of § 57.5001 to add respirable crystalline silica as an exception. The amended paragraph (a) of § 57.5001 would govern exposure limits for airborne contaminants other than respirable crystalline silica and asbestos for underground MNM mines.

3. Part 70—Mandatory Health Standards—Underground Coal Mines

a. Section 70.2—Definitions.

MSHA proposes to remove the *Quartz* definition in § 70.2. With the adoption of an independent respirable crystalline silica standard in proposed part 60, the Agency is proposing to remove RCMD when quartz is present in § 70.101 and the term quartz would no longer appear in part 70.

b. Section 70.101—Respirable Dust Standard When Quartz Is Present

MSHA is proposing to remove the entire section and reserve the section number. The RCMD when quartz is present in § 70.101 would no longer be needed because MSHA is proposing an independent respirable crystalline silica standard in proposed part 60.

MSHA's proposed independent standard for respirable crystalline silica would result in miners' exposure to respirable crystalline silica no longer being controlled indirectly by reducing respirable dust. NIOSH, the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (Dust Advisory Committee), and the Department of Labor's Inspector General [35] have each recommended the adoption of an independent standard for respirable quartz exposure in coal mines. NIOSH evaluated the effectiveness of the existing standard and found the approach of controlling miners' exposures to respirable crystalline silica indirectly through the control of respirable dust did not protect miners from excessive exposure to respirable quartz in all cases (Joy GJ 2012). The study concluded that a separate respirable quartz standard, as described by the 1995 NIOSH Criteria Document, could reduce miners' risk of overexposures to respirable quartz and, by extension, their risk of developing silicosis. The adoption of a separate standard would hold operators accountable, at risk of a citation and monetary penalty, when overexposures of the respirable crystalline silica PEL occur and enhance its sampling program to increase the frequency of operator sampling.

c. Section 70.205—Approved Sampling Devices; Operation; Air Flowrate

MSHA is proposing to amend paragraph (c) of § 70.205 to remove the reference to the reduced RCMD standard. References to the RCMD exposure limit specified in § 70.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

d. Section 70.206—Bimonthly Sampling; Mechanized Mining Units

MSHA is proposing to amend subpart C, Sampling Procedures, by removing § 70.206 and reserving the section number. Section 70.206 included requirements for bimonthly sampling of mechanized mining units which were in effect until January 31, 2016, and are no longer needed.

[35] Office of Inspector General Audit 05–21–001–06–001, MSHA Needs to Improve Efforts to Protect Coal Miners from Respirable Crystalline Silica (Nov. 12, 2020). The Inspector General recommended that MSHA:

1. Adopt a lower legal exposure limit for silica in coal mines based on recent scientific evidence.

2. Establish a separate standard for silica that allows MSHA to issue a citation and monetary penalty when violations of its silica exposure limit occur.

3. Enhance its sampling program to increase the frequency of inspector samples where needed (*e.g.,* by implementing a risk-based approach).

e. Section 70.207—Bimonthly Sampling; Designated Areas

MSHA is proposing to amend subpart C, Sampling Procedures, by removing § 70.207 and reserving the section number. Section 70.207 included requirements for bimonthly sampling of designated areas that were in effect until January 31, 2016, and are no longer needed.

f. Section 70.208—Quarterly Sampling; Mechanized Mining Units

MSHA is proposing to amend § 70.208 to remove references to a reduced RCMD standard. Paragraph (c) in § 70.208 would be removed and the paragraph designation reserved. References to the respirable dust standard specified in § 70.100 would replace references to the applicable standard throughout the section.

A new table 1 to § 70.208 would be added. The table contains the Excessive Concentration Values (ECV) for the section based on a single sample, 3 samples, or the average of 5 or 15 full-shift coal mine dust personal sampler unit (CMDPSU) or continuous personal dust monitor (CPDM) concentration measurements. This table contains the remaining ECV after the removal of the reduced standard in § 70.101. It was generated from data contained in existing Tables 70–1 and 70–2 to subpart C of part 70. Conforming changes are made to paragraphs (e) and (f)(1) and (2) to update the name of the table to table 1 to § 70.208.

g. Section 70.209—Quarterly Sampling; Designated Areas

Similar to the proposed changes discussed above for § 70.208, MSHA is proposing to amend § 70.209 to remove references to a reduced RCMD standard. Paragraph (b) in § 70.209 would be removed and the paragraph designation reserved. References to the RCMD exposure limit specified in § 70.100 would replace references to the applicable standard.

A new table 1 to § 70.209 would be added. The table contains the ECVs for the section based on a single sample, 2 or more samples, or the average of 5 or 15 full-shift CMDPSU/CPDM concentration measurements. This table contains the remaining ECV after the removal of the reduced RCMD standard in § 70.101. It was generated from data contained in existing Tables 70–1 and 70–2 to subpart C of part 70. Conforming changes are made to paragraphs (c) and (d)(1) and (2) to update the name of the table to table 1 to § 70.209.

h. Subpart C—Table 70–1 and Table 70–2

MSHA is proposing to amend subpart C, Sampling Procedures, by removing Table 70–1 *Excessive Concentration Values (ECV) Based on Single, Full-Shift CMDPSU/CPDM Concentration Measurements* and Table 70–2 *Excessive Concentration Values (ECV) Based on the Average of 5 or 15 Full-Shift CMDPSU/CPDM Concentration Measurements* because § 70.101 would be removed. These tables would be replaced with new tables added to §§ 70.208 and 70.209.

4. Part 71—Mandatory Health Standards—Surface Coal Mines and Surface Work Areas of Underground Coal Mines

a. Section 71.2—Definitions

As discussed in the analysis of conforming amendments for § 70.2, MSHA also proposes to remove the *Quartz* definition in § 71.2 because the Agency is proposing to remove the respirable dust standard when quartz is present in § 71.101. The term quartz would no longer appear in part 71.

b. Section 71.101—Respirable Dust Standard When Quartz Is Present

MSHA is proposing to remove the entire section of § 71.101 and reserve the section number. Similar to the proposed conforming amendments for § 70.101, the respirable coal mine dust standard when quartz is present in § 71.101 would no longer be needed because MSHA is proposing an independent respirable crystalline silica standard in part 60.

MSHA's proposal to adopt an independent standard for respirable crystalline silica would replace the existing method of indirectly controlling miners' exposure to silica by reducing respirable coal dust. As stated previously, NIOSH evaluated the effectiveness of the existing standard and found the existing approach of controlling miners' exposures to respirable crystalline silica indirectly through the control of respirable dust did not protect miners from excessive exposure to respirable crystalline silica in all cases. The study concluded that a separate respirable crystalline silica standard, as described by the 1995 NIOSH Criteria Document, could reduce miners' risk of overexposures to respirable crystalline silica and, by extension, their risk of developing silicosis. The adoption of a separate standard would allow MSHA to issue a citation and monetary penalty when overexposures of the respirable crystalline silica PEL occur and enhance its sampling program to increase the frequency of inspector sampling.

c. Section 71.205—Approved Sampling Devices; Operation; Air Flowrate

MSHA is proposing to amend paragraph (c) of § 71.205 to remove the reference to the reduced RCMD standard. References to the respirable dust standard specified in § 71.100 would replace the reference to the applicable standard. The rest of the section would remain unchanged.

d. Section 71.206—Quarterly Sampling; Designated Work Positions

Similar to the analysis of conforming amendments for §§ 70.208 and 70.209, MSHA is proposing to amend § 71.206 to remove references to the reduced RCMD standard. Paragraph (b) in § 71.206 would be removed and the paragraph designation reserved. Other conforming changes for § 71.206 would remove references to the applicable standard and replace them, where needed, with references to the respirable dust standard specified in § 71.100 throughout the section.

MSHA is also proposing to amend paragraph (l) by removing Table 71–1 *Excessive Concentration Values (ECV) Based on Single, Full-Shift CMDPSU/CPDM Concentration Measurements* and Table 71–2 *Excessive Concentration Values (ECV) Based on the Average of 5 Full-Shift CMDPSU/CPDM Concentration Measurements* since reference to a reduced RCMD standard in § 71.101 would be removed. They would be replaced with a new table added to § 71.206.

Existing paragraph (m) would be modified by removing the language, ''in effect at the time the sample is taken, or a concentration of respirable dust exceeding 50 percent of the standard established in accordance with § 71.101,'' because the reduced standard in § 71.101 would be removed, as discussed above, which removes the reference to the reduced standard and replaces it with a reference to the respirable dust standard specified in § 71.100.

A new table 1 to § 71.206 would be added. This table contains the ECV for the section based on a single sample, two or more samples, or the average of five full-shift CMDPSU/CPDM concentration measurements. This table contains the remaining ECV after the removal of the reduced standard in § 71.101. It was generated from data contained in existing Tables 71–1 and 71–2 to subpart C of part 71. Conforming changes are made to paragraphs (h) and (i)(1) and (2) to update the name of the table to table 1 to § 71.206.

e. Section 71.300—Respirable Dust Control Plan; Filing Requirements

MSHA is proposing to amend § 71.300 to remove references to the reduced RCMD standard. The respirable dust standard specified in § 71.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

f. Section 71.301—Respirable Dust Control Plan; Approval by District Manager and Posting

MSHA is proposing to amend § 71.301 to remove references to the reduced RCMD standard. The respirable dust standard specified in § 71.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

5. Part 72—Health Standards for Coal Mines

a. Section 72.800—Single, Full-Shift Measurement of Respirable Coal Mine Dust

MSHA is proposing to amend § 72.800 in subpart E, Miscellaneous, and remove references to the reduced RCMD standard. The proposed section would also replace references to Tables 70–1, 71–1, and 90–1 with references to tables in §§ 70.208, 70.209, 71.206, and 90.207.

6. Part 75—Mandatory Safety Standards—Underground Coal Mines

a. Section 75.350(b)(3)(i) and (ii)—Belt Air Course Ventilation

MSHA is proposing to update § 75.350 by revising paragraph (b)(3)(i) and removing paragraphs (b)(3)(i)(A) and (B) and (b)(3)(ii).

Paragraph (b)(3)(i)(A) would be removed because its provision has not been in effect since August 1, 2016. Paragraph (b)(3)(i)(B) would be removed because the proposed revised language in paragraph (b)(3)(i) would be simplified by stating that ''[t]he average concentration of respirable dust in the belt air course, when used as a section intake air course, shall be maintained at or below 0.5 mg/m^3.'' This would ensure that miners would be protected from coal dust overexposures, including respirable crystalline silica overexposures, by maintaining the RCMD PEL in the belt air course at 50 μg/m^3. Therefore, paragraph (b)(3)(i)(B) which sets the PEL for belt course air at 0.5 mg/m^3 would be redundant.

Existing paragraph (b)(3)(ii) would be removed since it refers to a reduced RCMD standard under § 70.101 that would also be removed. Existing

paragraph (b)(3)(iii) would be redesignated to (b)(3)(ii).

7. Part 90—Mandatory Health Standards—Coal Miners Who Have Evidence of the Development of Pneumoconiosis

a. Section 90.2—Definitions

Similar to the proposed changes for §§ 70.2 and 71.2, MSHA proposes to remove the *Quartz* definition in § 90.2 because the Agency proposes to remove the respirable dust standard when quartz is present in § 90.101. The term quartz would no longer appear in part 90.

In addition, MSHA is revising the definition of *Part 90 miner* to remove references to the reduced RCMD standard. The respirable dust standard specified in § 90.100 would replace the reference to the applicable standard. The definition of Part 90 miner would also be updated to define Part 90 miners as miners who have exercised the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the respirable dust standard specified in § 90.100.

b. Section 90.3—Part 90 Option; Notice of Eligibility; Exercise of Option

MSHA is proposing to revise paragraph (a) in § 90.3 to require that miners diagnosed with pneumoconiosis must be afforded the option to work in an area of a mine where the average concentration of respirable dust is continuously maintained below the respirable dust standard specified in § 90.100 rather than at or below the applicable standard. The rest of the section would remain unchanged.

c. Section 90.101—Respirable Dust Standard When Quartz Is Present

MSHA is proposing to remove the entire section and reserve the section number. The respirable coal mine dust standard when quartz is present in § 90.101 would no longer be needed because MSHA is proposing an independent respirable crystalline silica standard in proposed part 60.

MSHA's proposal to adopt an independent standard for respirable crystalline silica would replace the existing method of indirectly controlling miners' exposure to respirable crystalline silica by reducing respirable coal dust. As stated previously, NIOSH evaluated the effectiveness of the existing standard and found the existing approach of controlling miners' exposures to respirable crystalline silica indirectly through the control of respirable dust did not protect miners from excessive exposure to respirable quartz in all cases. The study concluded that a separate respirable quartz standard, as described by the 1995 NIOSH Criteria Document, could reduce miners' risk of overexposures to respirable quartz and, by extension, their risk of developing silicosis.

d. Section 90.102—Transfer; Notice

MSHA is proposing to amend § 90.102 to remove references to the reduced RCMD standard. The respirable dust standard specified in § 90.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

e. Section 90.104—Waiver of Rights; Re-Exercise of Option

MSHA is proposing to amend § 90.104 to remove references to the reduced RCMD standard. The respirable dust standard specified in § 90.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

f. Section 90.205—Approved Sampling Devices; Operation; Air Flowrate

MSHA is proposing to amend § 90.205 to remove the reference to the reduced RCMD standard. The respirable dust standard specified in § 90.100 would replace the reference to the applicable standard. The rest of the section would remain unchanged.

g. Section 90.206—Exercise of Option or Transfer Sampling

MSHA is proposing to amend § 90.206 to remove references to the reduced RCMD standard. The respirable dust standard specified in § 90.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

h. Section 90.207—Quarterly Sampling

Similar to the analysis of conforming amendments for §§ 70.208, 70.209, and 71.206, MSHA is proposing to amend § 90.207 to remove references to the reduced RCMD standard. Paragraph (b) in § 90.207 would be removed and the paragraph designation reserved. The respirable dust standard specified in § 90.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

MSHA is proposing to amend paragraph (g) by removing the Table 90–1 *Excessive Concentration Values (ECV) Based on Single, Full-Shift CMDPSU/CPDM Concentration Measurements* and Table 90–2 *Excessive Concentration Values (ECV) Based on the Average of 5 Full-Shift CMDPSU/CPDM Concentration Measurements* because § 90.101 would be removed.

A new table 1 to § 90.207 would be added to replace the tables removed in paragraph (g). The table contains the ECV for the section based on a single sample, two or more samples, or the average of 5 full-shift CMDPSU/CPDM concentration measurements. This table contains the remaining ECV after the removal of the reduced standard in § 90.101. It was generated from data contained in existing Tables 90–1 and 90–2 to subpart C of part 90. Conforming changes are made to paragraphs (c) and (d)(1) and (2) to update the name of the table to table 1 to § 90.207.

i. Section 90.300—Respirable Dust Control Plan; Filing Requirements

MSHA is proposing to amend § 90.300 to remove references to the reduced RCMD standard. The respirable dust standard specified in § 90.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

j. Section 90.301—Respirable Dust Control Plan; Approval by District Manager; Copy to Part 90 Miner

MSHA is proposing to amend § 90.301 to remove references to the reduced RCMD standard. The respirable dust standard specified in § 90.100 would replace references to the applicable standard. The rest of the section would remain unchanged.

C. Updating MSHA Respiratory Protection Standards: Proposed Incorporation of ASTM F3387–19 by Reference

MSHA is proposing to update the Agency's existing respiratory protection standard to help safeguard the life and health of all miners exposed to respirable airborne hazards at MNM and coal mines. The proposed rule would incorporate by reference ASTM F3387–19, ''*Standard Practice for Respiratory Protection*'' (ASTM F3387–19), as applicable, in existing §§ 56.5005, 57.5005, and 72.710, as well as in proposed § 60.14(c)(2). The ASTM F3387–19 standard includes provisions for selection, fitting, use, and care of respirators used to remove airborne contaminants from the air using filters, cartridges, or canisters, as well as respirators that protect in oxygen-deficient or immediately dangerous to life or health (IDLH) atmospheres. ASTM F3387–19 is based on the most recent consensus standards recognized by experts in government and professional associations on the selection, use, and maintenance for

respiratory equipment. The ASTM Standard would replace American National Standards Institute's ANSI Z88.2–1969, ''*Practices for Respiratory Protection*'' (ANSI Z88.2–1969), which is incorporated in the existing standards.

Incorporating this voluntary consensus standard complies with the Federal mandate—as set forth in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A119—that agencies use voluntary consensus standards in their regulatory activities unless doing so would be legally impermissible or impractical. This standard proposed for incorporation would also improve clarity because it is a consensus standard developed by stakeholders.

Under existing standards, whenever respiratory protective equipment is used, mine operators are required to have a respiratory protection program that is consistent with the provisions of ANSI Z88.2–1969. At the time of its publication, ANSI Z88.2–1969 reflected a consensus of accepted practices for respiratory protection.

Respirator technology and knowledge on respiratory protection have since advanced and as a result, changes in respiratory protection standards have occurred. For example, in 2006, OSHA revised its respiratory protection standard to add definitions and requirements for Assigned Protection Factors (APF) and Maximum Use Concentrations (MUCs) (71 FR 50121, 50122, Aug. 24, 2006). In addition to this rulemaking, OSHA updated Appendix A to § 1910.134: Fit Testing Procedures (69 FR 46986, 46993, Aug. 4, 2004).

After withdrawing the 1992 version of Z–88.2 in 2002, ANSI published the American National Standard, ANSI/AIHA Z88.10–2010, ''*Respirator Fit Testing Methods,*'' approved in 2010. These rules and standards addressed the topics of APFs and fit testing. APFs provide employers with critical information to use when selecting respirators for employees exposed to atmospheric contaminants found in industry. Finally, in 2015, ANSI published ANSI/ASSE Z88.2–2015, ''*Practices for Respiratory Protection,*'' which referenced OSHA regulations. These updates included requirements for classification of considerations for selection and use of respirators, establishment of cartridge/canister change schedules, use of fit factor value for respirator fit testing, calculation of effective protection factors, and compliance with compressed air dew requirements, compressed breathing air equipment, and systems and designation of positive pressure respirators. In July 2017, ANSI/ASSE transferred the responsibilities for developing respiratory consensus standards to ASTM International.

ASTM F3387–19 is based on the most recent consensus standards recognized by experts in government and professional associations on the selection, use, and maintenance for respiratory protection equipment. The standard contains detailed guidance and provisions on respirator selection that are based on NIOSH's long-standing experience of testing and approving respirators for occupational use and OSHA's research and rulemaking on respiratory protection. ASTM F3387–19 also addresses all aspects of establishing, implementing, and evaluating respiratory protection programs and establishes minimum acceptable respiratory protection program elements in the areas of program administration, standard operating procedures, medical evaluation, respirator selection, training, fit testing, respirator maintenance, inspection, and storage. ASTM F3387–19 comprehensively covers numerous aspects of respiratory protection and provides the most up-to-date provisions for current respirator technology and effective respiratory protection. Therefore, MSHA believes that ASTM F3387–19 would provide mine operators with information and guidance on the proper selection, use, and maintenance of respirators, which would protect the health and safety of miners.

Under this proposed rule, MSHA would require that operators establish a respiratory protection program in writing, that includes minimally acceptable program elements: program administration; standard operating procedures; medical evaluations; respirator selection; training; fit testing; and maintenance, inspection, and storage.

Beyond the minimally acceptable program elements, MSHA proposes to provide mine operators with flexibility to select the provisions in ASTM F3387–19 that are applicable to the conditions of their mines and respirator use by their miners. In MSHA's experience, the need for and actual use of respirators varies among mines for different reasons, including the type of commodity mined or processed and the mining method and controls used. At some mines, miners may not use or may only rarely use respirators. At other mines, miners may use respirators more frequently. Recognizing these differences, MSHA would allow mine operators to comply with the provisions in ASTM F3387–19 that they deem are relevant and appropriate for their mining operations and conditions.

MSHA has observed that many operators, in particular larger mine operators, have already implemented in their respiratory programs many OSHA requirements, which are substantially similar to many requirements in ASTM F3387–19. Indeed, ASTM F3387–19 refers to OSHA's regulations on respiratory protection programs, APFs and MUCs, and fit testing. MSHA believes that the mining industry is already familiar with many provisions in ASTM F3387–19. MSHA anticipates that for many large mine operators, few changes to their respiratory protection program may be warranted, whereas small mines, or mines that use respirators intermittently, may need to revise their respiratory practices in accordance with the requirements, as applicable, in ASTM F3387–19.

1. Respiratory Program Elements

Under the proposed rule, MSHA would require that the respiratory protection program be in writing and that it include the following minimally acceptable program elements: program administration; standard operating procedures; medical evaluations; respirator selection; training; fit testing; and maintenance, inspection, and storage.

a. Program Administration

ASTM F3387–19 specifies several practices related to respiratory protection program administration, including the qualifications and responsibilities of a program administrator. For example, ASTM F3387–19 provides that responsibility and authority for the respirator program be assigned to a single qualified person with sufficient knowledge of respiratory protection. Qualifications could be gained through training or experience; however, the qualifications of a program administrator must be commensurate with the respiratory hazards present at a worksite.

This individual should have access to and direct communication with the site manager about matters impacting worker safety and health. ASTM F3387–19 notes a preference that the administrator be in the company's industrial hygiene, environmental, health physics, or safety engineering department; however, a third-party entity meeting the provisions may also provide this service. ASTM F3387–19 outlines the respiratory program administrator's responsibilities, specifying that they should include: measuring, estimating, or reviewing

information on the concentration of airborne contaminants; ensuring that medical evaluations, training, and fit testing are performed; selecting the appropriate type or class of respirator that will provide adequate protection for each contaminant; maintaining records; evaluating the respirator program's effectiveness; and revising the program, as necessary.

b. Standard Operating Procedures (SOP)

SOPs are written policies and procedures available for all wearers of respirators to read and are established by the employer. ASTM F3387–19 states that written SOPs for respirator programs are necessary when respirators are used routinely or sporadically. Written SOPs should cover hazard assessment; respirator selection; medical evaluation; training; fit testing; issuance, maintenance, inspection, and storage of respirators; schedule of air-purifying elements; hazard re-evaluation; employer policies; and program evaluation and audit. ASTM F3387–19 also provides that wearers of respirators be provided with copies of the SOP and that written SOPs include special consideration for respirators used for emergency situations. The procedures are reviewed in conjunction with the annual respirator program audit and are revised by the program administrator, as necessary.

c. Medical Evaluation

Medical evaluations determine whether an employee has any medical conditions that would preclude the use of respirators, limitation on use, or other restrictions. ASTM F3387–19 provides that a program administrator advise the PLHCP of the following conditions to aid in determining the need for a medical evaluation: type and weight of the respirator to be used; duration and frequency of respirator use (including use for rescue and escape); typical work activities; environmental conditions (*e.g.,* temperature); hazards for which the respirator will be worn, including potential exposure to reduced-oxygen environments; and additional protective clothing and equipment to be worn. ASTM F3387–19 also incorporates ANSI Z88.6 *Respiratory Protection—Respirator Use—Physical Qualifications for Personnel.*

d. Respirator Selection

Proper respirator selection is an important component of an effective respiratory protection program. ASTM F3387–19 provides that proper respirator selection consider the following: the nature of the hazard, worker activity and workplace factors, respirator use duration, respirator limitations, and use of approved respirators. ASTM F3387–19 states that respirator selection for both routine and emergency use include hazard assessment, selection of respirator type or class that can offer adequate protection, and maintenance of written records of hazard assessment and respirator selection.

ASTM F3387–19 provides specific steps to establish the nature of inhalation hazards, including determining the following: the types of contaminants present in the workplace; the physical state and chemical properties of all airborne contaminants; the likely airborne concentration of the contaminants (by measurement or by estimation); potential for an oxygen-deficient environment; an occupational exposure limit for each contaminant; existence of an IDLH atmosphere; and compliance with applicable health standards for the contaminants.

ASTM F3387–19 includes other information to support the respirator selection process, including information on operational characteristics, capabilities, and performance limitations of various types of respirators. These limitations must be considered during the selection process. ASTM F3387–19 also describes types of respirators and consideration for their use, including service life, worker mobility, compatibility with other protective equipment, durability, comfort factors, compatibility with the environment, and compatibility with job and workforce performance. Finally, ASTM F3387–19 provides other essential information regarding respirator selection such as oxygen deficiency, ambient noise, and need for communication.

e. Training

Employee training is essential for correct respirator use. ASTM F3387–19 provides that all users be trained in their area of responsibility by a qualified person to ensure the proper use of respirators. A respirator trainer must be knowledgeable in the application and use of the respirators and must understand the site's work practices, respirator program, and applicable regulations. Employees who receive training include the workplace supervisor, the person issuing and maintaining respirators, respirator wearers, and emergency teams. To ensure the proper and safe use of a respirator, ASTM F3387–19 also provides that the minimum training for each respirator wearer includes: the need for respiratory protection; the nature, extent, and effects of respiratory hazards in the workplace; reasons for particular respirator selections; reasons for engineering controls not being applied or reasons why they are not adequate; types of efforts made to reduce or eliminate the need for respirators; operation, capabilities, and limitations of the respirators selected; instructions for inspecting, donning, and doffing the respirator; the importance of proper respirator fit and use; and maintenance and storage of respirators. The standard provides for each respirator wearer to receive initial and annual training. Workplace supervisors and persons issuing respirators are retrained as determined by the program administrator. Training records for each respirator wearer are maintained and include the date, type of training received, performance results (as appropriate), and instructor's name.

f. Respirator Fit Testing

A serious hazard may occur if a respirator, even though properly selected, is not properly fitted. For example, if a proper face seal is not achieved, the respirator would provide a lower level of protection than it is designed to provide because the respirator could allow contaminants to leak into the breathing area. Proper fit testing verifies that the selected make, model, and size of a respirator adequately fits and ensures that the expected level of protection is provided. ASTM F3387–19 includes provisions for qualitative and quantitative fit testing to determine the ability of a respirator wearer to obtain a satisfactory fit with a tight-fitting respirator and incorporates ANSI/AIHA Z88.10, *Respirator Fit Testing Methods,* for guidance on how to conduct fit testing of tight-fitting respirators and appropriate methods to be used. ASTM F3387–19 also provides information on conducting quantitative and qualitative fits test to determine how well a tight-fitting respirator fits a wearer. This includes information on the application of fit factors and assigned protection factors, and how these factors are used to ensure that a wearer is receiving the necessary protection. ASTM F3387–19 provides for each respirator wearer to be fit tested before being assigned a respirator (currently at least once every 12 months or repeated when a wearer expresses concern about respirator fit or comfort or has a condition that may interfere with the face piece seal).

g. Maintenance, Inspection, and Storage

Proper maintenance and storage of respirators are important in a respiratory protection program. ASTM F3387–19 includes specific provisions for

decontaminating, cleaning, and sanitizing respirators, inspecting respirators, replacing, and repairing parts, and storing and disposing of respirators. For example, the decontamination provisions state that respirators are decontaminated after each use and cleaned and sanitized regularly per manufacturer instructions. Following cleaning and disinfection, reassembled respirators are inspected to verify proper working condition. ASTM F3387–19 states that employers consult manufacturer instructions to determine component expiration dates or end-of-service life, inspect the rubber or other elastomeric components of respirators for signs of deterioration that would affect respirator performance, and repair or replace respirators failing inspection. ASTM F3387–19 also provides that respirators are stored according to manufacturer recommendations and in a manner that will protect against hazards (*i.e.,* physical, biological, chemical, vibration, shock, temperature extremes, moisture, etc.). It also provides that respirators are stored to prevent distortion of rubber or other parts.

2. Section-by-Section Analysis of Incorporation by Reference—ASTM F3387–19

a. Part 56—Safety and Health Standards—Surface Metal and Nonmetal Mines—Section 56.5005—Control of Exposure to Airborne Contaminants

Existing § 56.5005 provides that whenever respiratory protective equipment is used, a program for selection, maintenance, training, fitting, supervision, cleaning, and use shall meet the requirements of paragraph (b). Paragraph (b) requires that mine operators implement a respirator program consistent with the requirements of ANSI Z88.2–1969. MSHA is proposing to revise paragraph (b) to remove the incorporation by reference to ANSI Z88.2–1969 and incorporate by reference ASTM F3387–19.

MSHA is proposing to revise paragraph (b) to state that approved respirators must be selected, fitted, cleaned, used, and maintained in accordance with the requirements of ASTM F3387–19 ''as applicable.'' Under the proposal, MSHA would require that the respiratory program be in writing and that it include the following minimally acceptable program elements: program administration; standard operating procedures; medical evaluations; respirator selection; training; fit testing; and maintenance, inspection, and storage.

Also, MSHA is proposing to change paragraph (c) to require the presence of at least one other person with backup equipment and rescue capability when respiratory protection is used in atmospheres that are IDLH. This change is needed to conform to language in the proposed incorporation by reference of ASTM F3387–19, which defines IDLH as ''any atmosphere that poses an immediate hazard to life or immediate irreversible debilitating effects on health'' (ASTM International 2019).

b. Part 57—Safety and Health Standards—Underground Metal and Nonmetal Mines—Section 57.5005—Control of Exposure to Airborne Contaminants

Existing § 57.5005 provides that whenever respiratory protective equipment is used, a program for selection, maintenance, training, fitting, supervision, cleaning, and use shall meet the requirements of paragraph (b). Paragraph (b) requires that mine operators implement a respirator program consistent with the requirements of ANSI Z88.2–1969. MSHA is proposing to revise paragraph (b) to remove the incorporation by reference to ANSI Z88.2–1969 and incorporate by reference ASTM F3387–19.

MSHA is proposing to revise paragraph (b) to state that approved respirators must be selected, fitted, cleaned, used, and maintained in accordance with the requirements of ASTM F3387–19 ''as applicable.'' Under the proposal, MSHA would require that the respiratory program be in writing and that it include the following minimally acceptable program elements: program administration; standard operating procedures; medical evaluations; respirator selection; training; fit testing; and maintenance, inspection, and storage.

Also, MSHA is proposing to change paragraph (c) to require the presence of at least one other person with backup equipment and rescue capability when respiratory protection is used in atmospheres that are IDLH. This change is needed to conform to language in the proposed incorporation by reference of ASTM F3387–19, which defines the term IDLH as ''any atmosphere that poses an immediate hazard to life or immediate irreversible debilitating effects on health'' (ASTM International 2019).

c. Part 72—Health Standards for Coal Mines—Section 72.710—Selection, Fit, Use, and Maintenance of Approved Respirators

Existing § 72.710 requires approved respirators be selected, fitted, used, and maintained in accordance with the provisions of ANSI Z88.2–1969, which was incorporated by reference into coal standards in 1995 (60 FR 30398, June 8, 1995). MSHA is proposing to revise § 72.710 by removing the requirement in the first sentence that coal mine operators must ensure that the maximum amount of respiratory protection is made available to miners when respirators are used. MSHA believes that the use of approved respirators and the proposed incorporation by reference of ASTM F3387–19 would ensure that coal miners' health is protected. Under the proposal, MSHA would require that the respiratory program be in writing and that it include the following minimally acceptable program elements: program administration; standard operating procedures; medical evaluations; respirator selection; training; fit testing; and maintenance, inspection, and storage.

VIII. Technological Feasibility

This technological feasibility analysis considers whether currently available technologies, used alone or in combination with each other, can be used by operators to comply with the proposed standard.

MSHA is required to set standards to assure, based on the best available evidence, that no miner will suffer material impairment of health or functional capacity from exposure to toxic materials or harmful physical agents over his working life. 30 U.S.C. 811(a)(6)(A). The Mine Act also instructs MSHA to set health standards to attain ''the highest degree of health and safety protection for the miner'' while considering ''the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' 30 U.S.C. 811(a)(6)(A). But the health and safety of the miner is always the paramount consideration: ''[T]he Mine Act evinces a clear bias in favor of miner health and safety,'' and ''[t]he duty to use the best evidence and to consider feasibility are appropriately viewed through this lens and cannot be wielded as counterweight to MSHA's overarching role to protect the life and health of workers in the mining industry.'' *Nat'l Min. Ass'n* v. *Sec'y, U.S. Dep't of Lab.,* 812 F.3d 843, 866 (11th Cir. 2016); 30 U.S.C. 801(a).

The D.C. Circuit clarified the Agency's obligation to demonstrate the technological feasibility of reducing occupational exposure to a hazardous substance. MSHA ''must only demonstrate a 'reasonable possibility' that a 'typical firm' can meet the permissible exposure limits in 'most of its operations.'' *Kennecott Greens Creek Min. Co.* v. *Mine Safety & Health Admin.,* 476 F.3d 946, 958 (D.C. Cir. 2007) (quoting *American Iron & Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991)).

This section presents technological feasibility findings that guided MSHA's selection of the proposed PEL. MSHA's technological feasibility findings are organized into two main sections covering: (1) the technological feasibility of proposed part 60; and (2) the technological feasibility of the proposed revision to existing respiratory protection standards. Based on the analyses presented in the two sections, MSHA preliminarily concludes that the Agency's proposal is technologically feasible. MSHA's feasibility determinations in this rulemaking are supported by its findings that the majority of the industry is already using technology that would be sufficient to comply with the proposed rule.

First, MSHA has preliminarily determined that proposed part 60 is technologically feasible. Many mine operators already maintain respirable crystalline silica exposures at or below the proposed PEL of 50 μg/m^3, and at mines where there are elevated exposures, operators would be able to reduce exposures to at or below the proposed PEL by properly maintaining existing engineering controls and/or by implementing new engineering and administrative controls that are currently available. In addition, mines would be able to satisfy the exposure monitoring requirements of proposed part 60 with existing, validated, and widely used sampling technologies and analytical methods.

Second, the analysis shows that the proposed update to MSHA's respiratory protection requirements is also technologically feasible. The mining industry's existing respiratory protection practices for selecting, fitting, using, and maintaining respiratory protection include program elements that are similar to those of *ASTM F3387–19,* ''*Standard Practice for Respiratory Protection*'' (ASTM F3387–19), which MSHA is proposing to incorporate by reference.

A. Technological Feasibility of Sampling and Analytical Methods

1. Sampling Methods

MSHA's proposed rule would require mine operators in both MNM and coal mines to conduct sampling for respirable crystalline silica using respirable particle size-selective samplers that conform to the ''*International Organization for Standardization (ISO) 7708:1995: Air Quality—Particle Size Fraction Definitions for Health-Related Sampling*'' standard. The ISO convention defines respirable particulates as having a 4 micrometer (μm) aerodynamic diameter median cut-point (*i.e.,* 4 μm-sized particles are collected with 50 percent efficiency), which approximates the size distribution of particles that when inhaled can reach the alveolar region of the lungs. For this reason, the ISO convention is widely considered biologically relevant for respirable particulates and provides appropriate criteria for equipment used to sample respirable crystalline silica. MSHA's current sampling method for MNM mines meets the ISO criteria by using a 10 mm Dorr-Oliver cyclone and a sampling pump operated at a flow rate of 1.7 liter per minute (L/min), and MNM mine operators also already use this type of sampler for MNM sampling under existing standards. MSHA's current sampling method for RCMD, including respirable crystalline silica, uses a 10 mm Dorr-Oliver cyclone but operated at 2.0 L/min to approximate the British Mining Research Establishment (MRE) sampling criteria, and thus does not meet the ISO criteria. Although, the existing sampling pumps can be adjusted to operate at a flow rate of 1.7 L/min flow rate to meet the ISO criteria. To comply with this proposed requirement, coal mine operators that currently use coal mine dust personal sampler units (CMDPSU) would need to adjust their samplers to the flow rate specified by the manufacturer for complying with the ISO.

There are a variety of size-selective samplers on the market that meet the ISO respirable-particle-size selection criteria. Examples include Dorr-Oliver cyclone currently used by MSHA and OSHA, operated at 1.7 L/min; SKC aluminum cyclone (2.5 L/min); HD cyclone (2.2 L/min); SKC GS–3 multi-inlet cyclone (2.75 L/min); and BGI GK 2.69 (4.2 L/min). Each cyclone has different operating specifications and performance criteria, but they all are compliant with the ISO criteria for respirable dust with an acceptable level of measurement bias. Manufacturers of size-selective samplers specify the flow rates that are necessary to conform to the particle size collection criteria of the ISO standard. Samplers used in both MNM and coal mines can be used to perform the proposed sampling, and because other commercially available (already on the market) samplers conform to the ISO standard, MSHA preliminarily finds that sampling in accordance with the ISO standard is technologically feasible.

2. Analytical Methods and Feasibility of Measuring Below the Proposed PEL and Action Level

After a respirable dust sample is collected and submitted to a laboratory, it must be analyzed to quantify the mass of respirable crystalline silica present. The laboratory method must be sensitive enough to detect and quantify respirable crystalline silica at levels below the applicable concentration. The analytical limit of detection (LOD) and/or limit of quantification (LOQ), together with the sample volume, determine the airborne concentration LOD and/or LOQ for a given air sample. MSHA proposes a PEL for respirable crystalline silica of 50 μg/m^3 as a full shift, 8-hour TWA for both MNM and coal mines. Several analytical methods are available for measuring respirable crystalline silica at levels well below the proposed PEL of 50 μg/m^3 and action level of 25 μg/m^3.

MSHA uses two main analytical methods (1) *P–2: X-Ray Diffraction Determination Of Quartz And Cristobalite In Respirable Metal/Nonmetal Mine Dust* (analysis by X-ray diffraction, XRD) for MNM mines and (2) *P–7: Determination Of Quartz In Respirable Coal Mine Dust By Fourier Transform Infrared Spectroscopy* (analysis by infrared spectroscopy, FTIR or IR) for coal mines.[36] The MSHA P–2 and P–7 methods, reliably analyze compliance samples collected by MSHA inspectors, including 15 years of MNM compliance samples and 5 years of coal industry compliance samples MSHA used for the exposure profile portion of this technological feasibility analysis. These methods are capable of measuring respirable crystalline silica exposures at levels below the proposed PEL and action level.

For an analytical method to have acceptable sensitivity for determining

[36] Other similar XRD methods include NIOSH–7500 and OSHA ID–142. XRD methods are able to distinguish between the different polymorphs—quartz, cristobalite and tridymite. Other IR methods include NIOSH 7602 and 7603. IR methods are efficient, but they are more prone to interferences and should only be used for samples with a well-characterized matrix (*e.g.,* coal dust).

exposures at the proposed PEL of 50 μg/m³ and action level of 25 μg/m³, the LOQ must be at or below the amount of analyte (*e.g.,* quartz) that would be collected in an air sample where the concentration of analyte is equivalent to the proposed PEL or action level. To determine the minimum airborne concentration that can be quantified, the LOQ mass is divided by the sample air volume, which is determined by the sampling flow rate and duration. Table VIII–1 presents minimum quantifiable quartz concentrations, for various cyclones and established analytical methods.

Table VIII-1. Minimum Quantifiable Quartz Concentrations, Determined by Reporting Limit or LOQ and Sampling Volume

Sampling Parameters (examples)	Reporting Limit or LOQ = 5 μg	Reporting Limit or LOQ = 9.76 μg	Reporting Limit or LOQ = 12 μg
Airflow rate: 1.7 L/min Sampling minutes: 480 Sample air volume: 816 L	6.1 μg/m³	12.0 μg/m³	14.7 μg/m³
Airflow rate: 2.5 L/min Sampling minutes: 480 Sample air volume: 1,200 L	4.2 μg/m³	8.1 μg/m³	10 μg/m³
Airflow rate: 2.75 L/min Sampling minutes: 480 Sample air volume: 1,320 L	3.8 μg/m³	7.4 μg/m³	9.1 μg/m³
Airflow rate: 4.2 L/min Sampling minutes: 480 Sample air volume: 2,016 L	2.5 μg/m³	4.8 μg/m³	6.0 μg/m³

Notes:

a. An analytical method LOQ may be referred to as a reporting limit (RL) or reliable quantitation limit (RQL).
b. The minimum quantifiable concentration may be adjusted higher by the laboratory based on the laboratory's analytical method, instrumentation, and interferences in the sample.
c. Reporting Limits and LOQ values were taken from limits reported by (1) commercial laboratories (5 μg) (EMSL Analytical, Inc., 2022; RJ Lee Group, 2021; SGS Galson, 2016), (2) OSHA ID-142 (9.76 μg), and (3) MSHA P-2 and P-7 (12 μg).
d. Air volume (in liters) calculated as: (sampling minutes) x (air flow rate as L/min)
e. Concentrations (μg/m³) calculated as: (μg quartz) / (L air volume) x 1000 L/m³

Based on this discussion, MSHA preliminarily finds that current analytical methods are sufficiently sensitive to meet the proposed PEL and action level.

3. Laboratory Capacity

MSHA's proposed standard would require that mines conduct baseline sampling, periodic sampling, corrective actions sampling, and post-evaluation sampling with analyses conducted by laboratories that meet *ISO 17025, General Requirements for the Competence of Testing and Calibration Laboratories* (ISO 17025). The majority of U.S. industrial hygiene laboratories that perform respirable crystalline silica analysis are accredited to ISO 17025 by the American Industrial Hygiene Association (AIHA) Laboratory Accreditation Program (LAP). The AIHA LAP lists 23 accredited commercial laboratories nationwide that, as of April 2022, perform respirable crystalline silica analysis using an MSHA, NIOSH or OSHA method.

MSHA interviewed a sample of three laboratories (one small-capacity laboratory,[37] one medium-capacity laboratory,[38] and one large-capacity laboratory) [39] to estimate their sample-processing capacity. Insights from these interviews suggest that laboratories have the ability to provide surge capacity as the proposed rule is phased in. Collectively, these three laboratories could process approximately 33,240 samples by XRD (suitable for MNM mines) and 1,752 samples by FTIR or IR (suitable for coal mines) within a 6-month period. Extrapolating this across all laboratories that can analyze respirable crystalline silica samples, MSHA estimates that 232,680 samples for MNM mines and 12,250 samples for coal mines could be processed in the phase-in 6-month period. Over the first 12 months after the standard goes into effect, analysis would be available for 465,360 samples for MNM mines and 24,500 samples for coal mines.

Based on exposure profiles for the MNM and coal mining industries and MSHA's experience and knowledge of the mining industry, MSHA estimates that within this first 12-month period, mines would seek analysis for a total of 172,907 respirable crystalline silica samples (including 58,126 samples for MNM mines and 12,373 samples for coal mines associated with the 6-month baseline sampling period). In the subsequent 12-month period, mines would require analysis for 102,409 samples (includes process/control measure evaluation samples and periodic samples associated with the

[37] The small capacity laboratory has a maximum respirable crystalline silica sample analysis capacity of 300 samples per month (280 additional samples per month above the current number of samples analyzed), a level which the laboratory could sustain for two months.

[38] The medium capacity laboratory has a maximum respirable crystalline silica sample analysis capacity of 2,025 samples per month. Surge from the mining industry is considered to replace, rather than be in addition to the current number of samples analyzed.

[39] The large capacity laboratory has a maximum respirable crystalline silica sample analysis capacity of 4,500 samples per month (3,700 additional samples per month above the current number of samples analyzed).

proposed action level), a number that will decline over years 1 through 6 as the mine operators reduce some miner exposures below the proposed action level.[40] Comparing these figures with the surge capacity estimates previously noted above, MSHA believes that there would be sufficient processing capacity to meet the sampling analysis schedule envisioned in the proposed rule.

a. Baseline Sampling

MSHA's proposal would require baseline sampling for each miner who is or may reasonably be expected to be exposed to respirable crystalline silica within 180 days (6 months) of the standard's effective date.[41] This would require an initial increase in analytical laboratory capacity of approximately 70,498 sample analyses over 6 months. MSHA expects that with months of lead time during the proposed rule and final rule stages of the rulemaking, laboratories would anticipate the initial baseline period increase in demand and would respond by increasing their analytical capacity. For example, laboratories could acquire additional instrumentation, train additional analysts, or add a second or third operating shift. This is particularly likely given that demand would be based on a regulatory requirement and during the rulemaking process MSHA would conduct outreach to make all relevant stakeholders aware of the rule's provisions. MSHA is specifically soliciting comments on the technological feasibility of laboratory capability to conduct baseline sampling. At this point in the rulemaking, MSHA believes that the proposed rule is technologically feasible for laboratories to conduct baseline sampling analyses.

b. Periodic, Corrective Actions, and Post-Evaluation Sampling

Under proposed § 60.12 (b)–(e), three conditions would require mine operators to conduct additional sampling after the initial 6-month baseline period. First, when the most recent sampling indicates that miner exposures are at or above the proposed action level (25 μg/m^3) but at or below the proposed PEL (50 μg/m^3), the mine operator would be required to sample within 3 months of that sampling and continue to sample within 3 months of the previous sampling until two consecutive samplings indicate that miner exposures are below the action level. Second, where the most recent sampling indicates that miner exposures are above the PEL, the mine operator would be required to sample after corrective actions are taken to reduce overexposures, until sampling results indicate miner exposures are at or below the PEL. Third, if the mine operator determines, as a result of the semi-annual evaluation, that miners may be exposed to respirable crystalline silica at or above the action level, the mine operator would be required to perform sampling to assess the full-shift, 8-hour TWA exposure of respirable crystalline silica for each miner who is or may reasonably be expected to be at or above the action level.

MSHA estimates that the total number of analyses (489,860) that laboratories will be able to perform per year is more than 2.5 times the total estimated number of samples for which mines will seek analyses in the first year (172,907). Based on the estimated surplus analyses available beyond baseline sampling (419,362), MSHA preliminarily finds that periodic, corrective actions, and post-evaluation sampling would also be technologically feasible both in the first year and in subsequent years.[42]

B. Technological Feasibility of the Proposed PEL

1. Methodology

The technological feasibility analysis for the proposed PEL relies primarily on information from three key sources:

- MSHA's Standardized Information System (MSIS) respirable crystalline silica exposure data, which includes 57,769 MNM and 63,127 coal mine compliance samples collected by MSHA inspectors; these samples were of sufficient mass to be analyzed for respirable crystalline silica by MSHA's analytical laboratory.[43]
- The National Institute for Occupational Safety and Health (NIOSH) series on reducing respirable dust in mines, including: ''Dust Control Handbook for Industrial Minerals Mining and Processing, Second Edition'' (NIOSH, 2019b) and ''Best Practices for Dust Control in Coal Mining, Second Edition'' (NIOSH, 2021a).[44] With cooperation from the MNM and coal mining industries, NIOSH has extensively researched and documented engineering and administrative controls for respirable crystalline silica in mines.
- MSHA's knowledge of the mining industry. MSHA has over four decades of experience inspecting surface mines at least twice per year and underground mines at least four times per year and in assisting mine operators and miners with technological issues, including control of respirable dust (including respirable crystalline silica) exposure. MSHA offers informational programs, training, publications, onsite evaluations, and investigations that document conditions in mines and help mines operate in a safe and healthy manner.[45]

MSHA also consulted other published reports, scientific journal articles, and information from equipment manufacturers and mining industry suppliers.[46]

2. The Technological Feasibility Analysis Process

a. Mining Commodity Categories and Activity Groups

As described in the Preliminary Regulatory Impact Analysis (PRIA), MSHA categorized mine types into six MNM ''commodity categories'' (using

[40] MSHA anticipates that in the initial six-month baseline period mine operators will collect 70,498 baseline samples, of which 12,373 will be coal mine samples. In the 12 months beginning after the initial baseline period, mines will collect 88,281 samples for miners who are exposed at or above the proposed action level (25 μg/m^3), but at or below the proposed PEL, plus 14,128 samples to evaluate corrective action and process change (*i.e.,* processes which must be analyzed to determine whether newly implemented dust control measures are successful and processes newly identified during periodic walk-through evaluations), for a total of 102,409 samples per year (including 25,152 coal mine samples). Estimates are as of December 2022.

[41] Where several miners perform similar activities on the same shift, only a representative fraction of miners (minimum of two miners) would need to be sampled, including those expected to have the highest exposures.

[42] 489,860 total annual laboratory analyses divided by 172,907 mine samples to be analyzed, equals 2.83 percent surplus sample analyses. 489,860 total analyses − 70,498 baseline analyses = a surplus of 419,362 analyses available for the 102,409 periodic, corrective actions, and process change sampling.

[43] These respirable crystalline silica exposure data consist of 15 years of MNM mine samples (January 1, 2005, through December 31, 2019) and five years of coal mine samples (August 1, 2016, through July 31, 2021). These MSHA compliance samples represent the conditions identified by MSHA inspectors as having the greatest potential for respirable crystalline silica exposure during the periodic inspection when sampling occurred. While MSHA's laboratory also analyzes mine operators' respirable coal mine dust samples containing respirable crystalline silica, those samples are not included in the data used for this analysis.

[44] Together, these two recent reports provide more than 500 pages of detailed descriptions, discussion, and illustrations of dust control technologies currently used in mines.

[45] MSHA also analyzes RCMD samples collected by mine operators, including those containing respirable crystalline silica, in addition to the compliance samples collected by MSHA inspectors (mentioned in the first bullet of this series).

[46] Project personnel reviewed 104,365 samples collected and analyzed by MSHA for respirable crystalline silica, plus another 103,745 samples collected but not analyzed due to insufficient respirable dust collected in the sample. They examined over 200 published reports, proceedings, case studies, analytical methods, and journal articles, in addition to inspecting more than 200 web page, product brochures, user manuals, service/maintenance manuals and descriptive literature for dust control products, mining equipment, and related services.

the method of Watts *et al.,* 2012) based on similarities in exposure characteristics. MNM mine categories include metal, nonmetal, stone, crushed limestone, and sand and gravel. All coal mines are categorized together as one commodity category.

Within each commodity, MSHA further separated mining operations into the four activity groups widely used by the industry: (1) development and production miners (drillers, stone cutters); (2) ore/mineral processing miners (crushing/screening equipment operators and kiln, mill, and concentrator workers in mine facilities); (3) miners engaged in load/haul/dump activities (conveyor, loader, and large haulage vehicle operators, such as dump truck drivers); and (4) miners in all other occupations (mobile and utility workers, such as surveyors, mechanics, cleanup crews, laborers, and operators of compact tractors and utility trucks).

Before determining the feasibility of reducing miners' exposure to respirable crystalline silica, MSHA gathered and analyzed information to understand current miner exposures by creating an ''exposure profile,'' identified the existing (*i.e.,* baseline) conditions and the exposure levels associated with those conditions, and determined whether mines would need additional control methods, and if so, whether those methods were available.

b. Exposure Profiles

MSHA classified all valid respirable crystalline silica samples in the Agency's MSIS data,[47] grouping the data by commodity category, followed by activity group.[48] MSHA created an exposure profile to better examine the sample data for each commodity category. These profiles include basic summary statistics, such as sample count, mean, median, and maximum values, presented as ISO 8-hour TWA values. They also show the sample distribution within the following exposure ranges: ≤25 μg/m³, >25 μg/m³ to ≤50 μg/m³, >50 μg/m³ to ≤100 μg/m³ (equivalent to 85.7 μg/m³ in coal mines for a sample calculated as an 8-hour TWA), >100 μg/m³ to ≤250 μg/m³, >250 μg/m³ to ≤500 μg/m³, and >500 μg/m³.[49]

In Table VIII–2, the respirable crystalline silica exposure data for MNM miners are summarized by commodity and for the MNM industry as a whole, while Table VIII–3 presents the exposure profile as the percentage of samples in each exposure range. Overall, approximately 82 percent of the 57,769 MNM compliance samples were at or below the proposed PEL (50 μg/m³). The exposure profile shows variability between the commodity categories: approximately 73 percent of metal miner exposures at or below the proposed PEL (50 μg/m³) (the lowest among all MNM mines), compared with approximately 90 percent of the crushed limestone miner exposures (the highest among all MNM mines).

Table VIII–4 and Table VIII–5 present the corresponding respirable crystalline silica exposure information for coal miners by location (underground or surface). Overall, approximately 93 percent of the 63,127 samples obtained by MSHA inspectors for coal miners were at or below the proposed PEL (50 μg/m³). There was little variation between samples for underground miners and surface miners (with approximately 93 and 92 percent of the samples at or below 50 μg/m³, respectively). Exposure values from the coal industry are expressed as ISO 8-hour TWAs, compatible with the proposed PEL.

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[47] MSHA removed duplicate samples, samples missing critical information, and those identified as invalid by the mine inspector, for example because of a ''fault'' (failure) of the air sampling pump during the sampling period.

[48] MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812); MSHA MSIS respirable crystalline silica data for the Coal Industry, August 1, 2016, through July 31, 2021 (version 20220617). All samples were collected by mine inspectors and were of sufficient mass to be analyzed for respirable crystalline silica by MSHA's laboratory.

[49] MSHA selected these ranges based on the proposed PELs under consideration, then multiples of 100 μg/m³ to show how data are distributed in the higher ranges. Table VIII–5 also presents additional exposure ranges corresponding to the 85.7 μg/m³ concentration for coal samples.

Table VIII-2. Summary of Respirable Crystalline Silica Exposures in the MNM Industry from 2005 to 2019, by Commodity Category

Commodity	Activity Group	Number of Samples	ISO Concentration, µg/m³		
			Mean	Median	Max
Metal	Overall: metal (all activity groups)	3,499	49.1	25.0	3,588
Nonmetal	Overall: nonmetal (all activity groups)	5,165	26.4	11.0	2,124
Stone	Overall: stone (all activity groups)	15,415	36.6	17.0	1,548
Crushed limestone	Overall: crushed limestone (all activity groups)	15,184	21.7	10.0	4,289
Sand and gravel	Overall: sand and gravel (all activity groups)	18,506	38.7	20.0	3,676
Overall: MNM	Overall: MNM	57,769	33.2	15.0	4,289

Notes:

Summary of personal samples presented as ISO 8-hour TWA concentrations. The proposed permissible exposure limit (PEL) for all mines is 50 µg/m³ as an 8-hour time-weighted average (8-hour TWA) sample collected according to the ISO standard 7708:1995: *Air Quality—Particle Size Fraction Definitions for Health-Related Sampling*.

a. The compliance samples summarized in this table were collected by MSHA inspectors as 8-hour TWAs using ISO-compliant sampling equipment with an air flow rate of 1.7 L/min, with results comparable to the proposed PEL.

b. When the mass of respirable crystalline silica collected was too small to be reliably detected by the laboratory, a mass of 2.5 µg for quartz and 5 µg for cristobalite (1/2 the respective limits of detection for these two forms of crystalline silica) were assumed and used to calculate sample results.

c. The procedure to calculate the ISO 8-hour TWA concentration (µg/m³) is:

$$\text{8-hour TWA} = \frac{quartz\ mass}{(480\ minutes)\ x\ (air\ flow\ rate)}\ x\ 1000\ \frac{L}{m^3}$$

Where: quartz mass is in micrograms (µg); normalized sampling time is 8 hours (480 minutes); flow rate = 1.7 L/min; 1000 Liters (L) per cubic meter (m³)

d. Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table VIII-3. Percentage Distribution of Respirable Crystalline Silica Exposures in the MNM Industry from 2005 to 2019, by Commodity Category

Commodity	Activity Group	Number of Samples	Percentage of Samples in ISO Concentration Ranges, µg/m³						Total %
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500	
Metal	Overall: metal (all activity groups)	3,499	51.6%	21.3%	16.3%	8.3%	1.9%	0.6%	100%
Nonmetal	Overall: nonmetal (all activity groups)	5,165	70.5%	15.1%	9.9%	3.8%	0.6%	0.1%	100%
Stone	Overall: stone (all activity groups)	15,415	60.3%	18.7%	13.6%	6.0%	1.1%	0.3%	100%
Crushed limestone	Overall: crushed limestone (all activity groups)	15,184	77.8%	12.5%	6.9%	2.3%	0.4%	0.2%	100%
Sand and gravel	Overall: sand and gravel (all activity groups)	18,506	58.6%	20.8%	13.2%	5.7%	1.2%	0.4%	100%
Overall: MNM	Overall: MNM	57,769	64.7%	17.6%	11.6%	4.8%	1.0%	0.3%	100%

Notes:

a. Personal samples were collected using ISO-compliant sampling equipment and calculated as an 8-hour time-weighted average (8-hour TWA). Samples were collected using an air flow rate of 1.7 L/min and reported as 8-hour TWAs. See notes in Summary table VIII-1 for additional details.

b. Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table VIII-4. Summary of Respirable Crystalline Silica Exposures in the Coal Mining Industry from 2016 to 2021, by Location

Location	Activity Group	Number of Samples	ISO Concentration (8-hour TWA, µg/m³)		
			Mean	Median	Max
Underground	Overall: underground (all activity groups)	53,095	22.1	16.0	778.6
Surface	Overall: surface (all activity groups)	10,032	20.5	11.1	747.8
Overall: coal	Overall: coal	63,127	21.9	16.0	778.6

Notes: Summary of personal samples presented as ISO 8-hour TWA concentrations. The proposed permissible exposure limit (PEL) for all mines is 50 µg/m³ as an 8-hour time-weighted average (8-hour TWA) sample collected according to the ISO standard 7708:1995: *Air Quality—Particle Size Fraction Definitions for Health-Related Sampling*.

a. The compliance samples summarized in this table were collected by MSHA inspectors for the entire duration of each miner's work shift using sampling equipment with an air flow rate of 2 L/min, with results reported as MRE TWA concentrations. For this rulemaking analysis, MSHA recalculated the samples as ISO-equivalent 8-hour TWA concentrations, comparable to the proposed PEL (since samples were not collected using an ISO-compliant sampling method). The procedure to calculate an ISO-equivalent concentration from an MRE TWA sample concentration involves normalizing the sample concentration to an 8-hour TWA and applying the empirically derived conversion factor of 0.857 recommended by NIOSH (1995a) using the following equation:

b. ISO 8-hour TWA concentration = $(MRE\ TWA\ in\ \mu g/m^3)\ x\ \frac{(original\ sampling\ time)}{(480\ minutes)}\ x\ 0.857$

c. Where: both concentrations (ISO 8-hour TWA and MRE TWA) are concentrations presented as µg/m³; sampling time in minutes.

d. When the mass of respirable crystalline silica collected was too small to be reliably detected by the laboratory, a mass of 1.5 µg (1/2 the limit of detection) was assumed and used to calculate sample results.

e. Source: MSHA MSIS respirable crystalline silica data for the Coal Industry, August 1, 2016, through July 31, 2021 (version 20220617). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table VIII-5. Percentage Distribution of Respirable Crystalline Silica Exposures as ISO 8-hour TWA in the Coal Industry from 2016 to 2021, by Location

Location	Activity Group	Number of Samples	Percentage of Samples in ISO Concentration Ranges, 8-hour TWA, µg/m³							Total %
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 85.7	> 85.7 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500	
Underground	*Overall: underground (all activity groups)*	53,095	72.7%	20.6%	5.1%	0.6%	1.0%	0.1%	0.0%	100%
Surface	*Overall: surface (all activity groups)*	10,032	79.5%	12.4%	4.6%	0.8%	2.3%	0.4%	0.1%	100%
Overall: coal	Overall: coal	63,127	73.8%	19.3%	5.0%	0.6%	1.2%	0.1%	0.0%	100%

Notes:

a. Personal samples presented in terms of ISO concentrations, normalized to 8-hour time-weighted averages (TWAs). The samples were originally collected for the entire duration of each miner's work shift, using an air flow rate of 2 L/min. See notes in Summary table VIII-3 for additional details.

b. Source: MSHA MSIS respirable crystalline silica data for the coal industry, August 1, 2016, through July 31, 2021 (version 20220617). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

c. Existing Dust Controls in Mines (Baseline Conditions)

MNM and coal mines are controlling dust containing respirable crystalline silica in various ways. As shown in Tables VIII–2 through VIII–5, respirable crystalline silica exposures exceeded the proposed PEL of 50 µg/m³ in about 18 percent of all MNM samples collected. Of all coal samples, exposure levels exceeded the proposed PEL in about seven percent of the samples. Overall, metal mines and sand and gravel mines had higher exposure levels than other commodity mines.

Despite the extensive dust control methods available, dust control measures have been implemented in some commodity categories to a greater degree than in others. This is partly because some commodity categories tend to have larger mines. MSHA has found that the larger the amount (tonnage) of material a mine moves (including overburden and other waste rock), the faster the mine tends to operate its equipment (*i.e.,* closer to the equipment capacity), creating more air turbulence and therefore generating more respirable crystalline silica. The amount of material moved also influences the number of miners employed at a mine, and therefore, the number of miners can be indirectly correlated to the amount of dust generated. MSHA has observed that in large mines, dusty conditions typically prompt more control efforts, usually in the form of added engineering controls.

MSHA has also found that metal mines, which are typically large operations with higher numbers of miners, tend to have available engineering controls for dust management. On the other hand, sand and gravel mines, which generally employ fewer miners and handle modest amounts of material, have very limited, if any, dust control measures. This is because most of the mined material is a commodity that only requires washing and screening into various sizes of product stockpiles, generating little waste material. Nonmetal, stone, and crushed limestone mines occupy the middle range in terms of employment, existing engineering controls, and maintenance practices.

Over the years, staff from multiple MSHA program areas have worked alongside miners and mine operators to improve safety and health by inspecting, evaluating, and researching mine conditions, equipment, and operations. These key programs, each of which has an onsite presence, include (but are not limited to) Mine Safety and Health Enforcement; Directorate of Educational Policy and Development which includes the National Mine Health and Safety Academy and the Educational Field and Small Mine Services; and the Directorate of Technical Support, which is comprised of the Approval and Certification Center and the Pittsburgh Safety and Health Technology Center (including its Health Field Division, National Air and Dust Laboratory, Ventilation Division, and other specialized divisions). Table VIII–6 reflects the collective observations of these MSHA programs, presented in terms of existing dust control (baseline conditions) and the classes of additional control measures that would provide those mines with the greatest benefit to reduce exposures below the proposed PEL and action level.

Table VIII–6 shows MSHA's assessment of existing dust controls in mines (baseline conditions) and additional controls needed to meet the proposed PEL for each commodity category, including the need for frequent scheduled maintenance. By conducting frequent scheduled maintenance, mine operators can reduce the concentration of respirable crystalline silica. Table VIII–6 shows that metal mines have adopted extensive dust controls, while sand and gravel mines tend to have minimal engineering controls, if any.

Table VIII-6. Baseline Conditions and Class of Additional Controls Needed, by Commodity

	Baseline (existing) Conditions		Additional Controls Needed to Achieve the Proposed PEL		
Commodity category	**Extent of engineering controls adopted**	**Dust control equipment maintenance practices**	**Extent of engineering controls needed**	**Extent of maintenance and repair needed**	**Extent of administrative controls needed**
Metal	Extensive	Minimal	Minimal	Extensive	Moderate
Nonmetal	Moderate	Moderate	Moderate	Moderate	Moderate
Stone	Moderate	Moderate	Moderate	Moderate	Moderate
Crushed limestone	Moderate	Moderate	Moderate	Moderate	Moderate
Sand and gravel	Minimal	Moderate	Moderate	Moderate	Extensive
Coal	Moderate	Moderate	Moderate	Moderate	Moderate

Notes:
a. Extensive, moderate and minimal are relative terms. "Extensive" indicates that the baseline (existing) condition is widely present among mines within the commodity, or that the additional control class is anticipated to be widely needed. "Moderate" indicates an intermediate level of baseline availability or anticipated need. "Minimal" means little or no baseline availability or need as an additional control (for that commodity).
b. Source: MSHA's experience from multiple program areas.

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Based on MSHA's experience, NIOSH research, and effective respirable dust controls currently available and in use in the mining industry, MSHA preliminarily finds that the baseline conditions include various combinations of existing engineering controls selected and installed by individual mines to address respirable crystalline silica generated during mining operations.

d. Respirable Crystalline Silica Exposure Controls Available to Mines

Under the proposal, the mine operator must install, use, and maintain feasible engineering controls, supplemented by administrative controls, when necessary, to keep each miner's exposure at or below the proposed PEL. Engineering controls reduce or prevent miners' exposure to hazards.[50] Administrative controls establish work practices that reduce the duration, frequency, or intensity of miners' exposures (although rotation of miners would be prohibited under the proposed rule).

MSHA data and experience show that mine operators already have numerous engineering and administrative control options to control miners' exposures to respirable crystalline silica. These control options are widely recognized and used throughout the mining industry. NIOSH has extensively researched and documented engineering and administrative controls for respirable crystalline silica in mines. As noted previously, NIOSH has published a series on reducing respirable dust in mines (NIOSH, 2019b; NIOSH, 2021a).

(1) Engineering controls

Examples of existing engineering controls used at mines and commercially available engineering controls that MSHA considered include:

- Wetting or water sprays that prevent, capture, or redirect dust;
- Ventilation systems that capture dust at its source and transport it to a dust collection device (*e.g.,* filter or bag house), dilute dust already in the air, or ''scrub'' (cleanse) dust from the air in the work area;
- Process enclosures that restrict dust from migrating outside of the enclosed area, sometimes used with an attached ventilation system to improve effectiveness (*e.g.,* crushing equipment and associated dump hopper enclosure, with curtains and mechanical ventilation to keep dust inside);
- Operator enclosures, such as mobile equipment cabs or control booths, which provide an environment with clean air for an equipment operator to work safely;
- Protective features on mining process equipment to help prevent process failures and associated dust releases (*e.g.,* skirtboards on conveyors, which protect the conveyor system from damage and prevent material on the conveyor from falling off, which generates airborne dust);
- Preventive maintenance conducted on engineering controls and mining equipment that can influence dust levels at a mine, to keep them functioning optimally; and
- Instrumentation and other equipment to assist mine operators and miners in evaluating engineering control

[50] Control measures that reduce respirable crystalline silica can also reduce exposures to other hazardous particulates, such as RCMD, metals, asbestos, and diesel exhaust. Operator enclosures and process enclosures also reduce hazardous levels of noise by creating a barrier between the operator and the noise source.

effectiveness and recognizing control failures or other conditions that need corrective action.[51]

(2) Administrative controls

Administrative controls include practices that change the way tasks are performed to reduce a miner's exposure. Administrative controls can be very effective and can even prevent exposure entirely. MSHA has preliminarily determined that various administrative controls are readily available to provide supplementary support to engineering controls. Examples of administrative controls would include housekeeping procedures; proper work positions of miners; walking around the outside of a dusty process area rather than walking through it; cleaning of spills; and measures to prevent or minimize contamination of clothing to help decrease miners' exposure to respirable crystalline silica. However, these control methods depend on human behavior and intervention and are less reliable than properly designed, installed, and maintained engineering controls. Therefore, administrative controls would be permitted only as supplementary measures, with engineering controls required as the primary means of protection. Nevertheless, administrative controls play an important role in reducing miners' exposure to respirable crystalline silica.[52]

(3) Combinations of Controls

Various control options can also be used in combinations. NIOSH has documented in detail most control methods and has confirmed that they are currently used in mines, both individually and in combination with each other (2019b, 2021a).

e. Maintenance

MSHA preliminarily finds that a strong and feasible preventive maintenance program plays an important role in achieving consistently lower respirable crystalline silica exposure levels. MSHA has observed that when engineering controls are installed and maintained in working condition, respirable dust exposures tend to be below the existing exposure limits. When engineering controls are not maintained, dust control efficiency declines and exposure levels rise. When engineering controls fail due to a lack of proper maintenance, a marked rise in exposures can occur, resulting in noncompliance with MSHA's existing exposure limits. Some examples of the impact that proper maintenance can have on respirable dust levels include:

- *Water spray maintenance:* An experiment using water spray bars that could be turned on or off showed that dust reduction was less effective each time additional spray nozzles were deactivated. A 10 percent decrease occurred when three of 21 sprays were shut off, but a 50 percent decrease occurred when 12 out of the 21 sprays were shut off. Decreased total water spray volume and gaps in the spray pattern (due to deactivated nozzles) were both partially responsible for the decreased dust control (Seaman *et al.,* 2020).
- *Water added to drill bailing air:* When introduced into the drill hole (with the bailing air through a hollow drill bit), water mixes with and moistens the drill dust ejected from the hole and can reduce respirable dust by more than 90% (NIOSH 2021a, 2019b). NIOSH reports that this same control measure, and others, are similarly effective for MNM and surface coal mine drills preparing the blasting holes used to expose the material below (whether ore or coal).
- *Ventilation system maintenance:* The amount of air cleaned by an air scrubber is decreased by up to one-third (33 percent) after one continuous mining machine cut. Cleaning the scrubber screens restores scrubber efficacy, but this maintenance must be performed after every cut. Spare scrubber screens make frequent cleaning practical without slowing production (NIOSH, 2021a).
- *Operator enclosure maintenance:* Tests with mining equipment showed that maintenance activities including repairing weather stripping and replacing clogged and missing cab ventilation system filters (intake, recirculation, final filters) increased miner protection, by up to 95 percent (NIOSH 2019b, 2021a).
- *Filter selection during maintenance:* Airflow is as important as filtration and pressurization in operator enclosures; during maintenance, filter selection can influence all three factors. Performing serial end-shift testing of enclosed cabs (on a face drill and a roof/rock bolter) at an underground crushed limestone mine, NIOSH compared installed HEPA filters and an alternative (MERV 16 filters). The latter provided an equal level of filtration and better overall miner protection by allowing greater airflow and cab pressurization. As an added advantage, NIOSH showed that these filters cost less and required less-frequent replacement, reducing maintenance expenses in this mining environment (Cecala *et al.,* 2016; NIOSH 2021a, 2019b).[53] [54]
- *Proper design and installation—foundation for effective maintenance:* A new replacement equipment operator enclosure (control booth) installed adjacent to the primary crusher at a granite stone quarry initially provided 50 to 96 percent respirable dust reduction, even with inadequate pressurization. The protection it offered miners tripled after the booth's second pressurization/filtration unit was activated (Organiscak *et al.,* 2016).

MSHA has observed that when engineering controls are properly maintained, exposure levels decrease or stay low. Metal mines, which typically have substantial controls already installed, primarily need reliable preventive maintenance programs to achieve the proposed PEL. It is also important to repair equipment damage that contributes to dust exposure (for example, damage to conveyor skirtboards that protect the conveyor system from damage and prevent spillage which generates airborne dust). Maintenance and repair programs must ensure that dust control equipment is functioning properly.

3. Feasibility Determination of Control Technologies

MSHA is proposing a PEL of 50 μg/m^3 for MNM and coal mines. As NIOSH has documented, the mining industry has a wide range of options for controlling dust exposure that are already in various configurations in mines (2019b; 2021a). NIOSH has carefully evaluated most of the dust controls used in the mining industry and found that many of the controls may be used in combinations with other control options. NIOSH has documented protective factors and exposure reductions of 30 to 90 percent or higher for many engineering and administrative controls.

[51] These instruments include dust monitors; water, air, and differential air pressure gauges; pitot tubes and air velocity meters; and video camera (NIOSH recommends software that pairs video with a dust monitor to track conditions that could lead to elevated exposures if not corrected). These instruments are discussed in NIOSH's best practices guides and dust control handbooks.

[52] Proposed paragraph 60.11(b) prohibits the use of rotation of miners as an administrative control used for compliance with this part.

[53] NIOSH believes this study, like many of its other mining studies on operator enclosures and surface drill dust controls, is relevant to both MNM mining and coal mining. NIOSH reports on this study, conducted at an underground limestone mine, in detail in both its Dust control handbook for industrial minerals mining and processing (second edition) (2019b) and its best practices for dust control in coal mining (second edition) (2021a).

[54] Acronyms: High efficiency particulate air (HEPA). Minimum efficiency reporting value (MERV).

MSHA also preliminarily finds that maintaining (including adjusting) or repairing existing controls would help achieve exposures at or below 50 μg/m³. For example, NIOSH found that performing maintenance on an operator enclosure can restore enclosure pressurization and reduce the respirable dust exposure of a miner by 90 to 98.9 percent (*e.g.,* by maintaining weather stripping, reseating or replacing leaking or clogged filters, and upgrading filtration) (NIOSH, 2019b). When an equipment operator remains inside a well-maintained enclosure for a portion of a shift (for example 75 percent of an 8-hour shift), the cab can reduce the exposure of the operator proportionally, to a level of 50 μg/m³ (or lower). This point is demonstrated by the following example involving a bulk loading equipment operator in a poorly maintained booth, exposed to respirable crystalline silica near the existing exposure limit (in the MNM sectors, 100 μg/m³, as ISO 8-hour TWA value; in the Coal sector, 85.7 μg/m³ ISO, calculated as an 8-hour TWA). During the 25 percent of their shift (two hours of an eight-hour shift) that the operator was working in the poorly maintained enclosure, their exposure would continue to be 100 μg/m³, while for the other six hours (operating mobile equipment with a fully refurbished protective cab), the exposure level would be 90 percent lower, or 10 μg/m³, resulting in an 8-hour TWA exposure of 33 μg/m³ for that miner's shift.[55] Greater exposure reductions could also be achieved by repairing or replacing the poorly maintained enclosure, or modifying the miner's schedule so that the miner works seven hours, rather than six, inside of the well-maintained enclosure.

Other engineering controls (*e.g.,* process enclosure, water dust suppression, dust suppression hopper, ventilation systems) could reduce dust concentrations in the area surrounding the poorly maintained enclosure, which would reduce the exposure of the operator inside. For example, if the poorly maintained enclosure was an open-air control booth (windows do not close) at a truck loading station, adding a dust suppression hopper (which reduces respirable dust exposure by 39 to 88 percent during bulk loading) (NIOSH, 2019b), would lead to lower exposure during the two hours the miner was inside the open-air booth. The calculated respirable crystalline silica 8-hour TWA exposure of that miner could be reduced from 33 μg/m³ (with improved operator enclosure alone) to 23 μg/m³ (improved operator enclosure plus dust suppression hopper).[56] As an added benefit, any helper or utility worker in the truck loading area would also experience reduced exposure.

Similarly, considering an example for a coal miner helper who spends 90 minutes (1.5 hours) per 8-hour shift assisting a drilling rig operator (in a protective operator's cab) drilling blast holes. The combination of controls used to control drilling dust (including water added to the bailing air, which can reduce airborne respirable dust emissions by up to 96 percent) usually maintain the helper's respirable crystalline silica exposure in the range of 35 μg/m³ (ISO) as an 8-hour TWA. If, however, the drill's on-board water tank runs dry due to poor maintenance, the respirable crystalline silica concentration near the drill will rise by 95 percent, meaning that the concentration is 20 times greater than the usual level (NIOSH 2021a). If the drill operator idles the drill and calls for water resupply, the helper will not experience an elevated exposure. If instead the drill is operated dry for another 30 minutes until water resupply arrives, the helper will experience a respirable crystalline silica exposure of 77 μg/m³ (ISO) as an 8-hour TWA. If dry drilling continued for 1.5 hours, the helper would have an exposure of 160 μg/m³ ISO as an 8-hour TWA.[57] After water is delivered, drill respirable dust emissions will return to their normal level once water is again introduced into the drill bailing air.

Based on these examples and the wide range of effective exposure control options available to the mining industry, MSHA preliminarily finds that control technologies capable of reducing miners' respirable crystalline silica exposures are available, proven, effective, and transferable between mining commodities; however, they must be well-designed and consistently used and maintained.

a. Feasibility Findings for the Proposed PEL

Based on the exposure profiles in Table VIII–2 and Table VIII–3 for MNM mines, and in Table VIII–4 and VIII–5 for coal mines, and the examples in the previous section that demonstrate the beneficial effect of combined controls, MSHA preliminarily finds that the proposed PEL of 50 μg/m³ is technologically feasible for all mines.

Table VIII–7 summarizes the technological feasibility of control technologies available to the mining industry, by commodity. MSHA preliminarily finds that control technologies are technologically feasible for all six commodities and their respective activity groups. Under baseline conditions, mines in each commodity category have already achieved respirable crystalline silica exposures at or below 50 μg/m³ for most of the miners represented by MSHA's 57,769 samples for MNM miners and 63,127 samples for coal miners.

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[55] Calculating the exposure for the shift: 8-hour TWA = [(10 μg/m³ × 6 hours) + (100 μg/m³ × 2 hours)]/8 hours = 33 μg/m³.

[56] Calculating the exposure with both the well-maintained operator enclosure (6 hours) and dust suppression hopper, assuming only the minimum documented respirable dust concentration reduction (39 percent): [(10 μg/m³ × 6 hours) + (100 μg/m³ × (1–0.39) × 2 hours)]/8 hours = 23 μg/m³.

[57] The 8-hour TWA exposure level of the helper, including the 30-minute period of elevated exposure, is calculated as: [(35 μg/m³ × 7.5 hours) + (35 μg/m³ × 20 × 0.5 hours)]/8 hours = 77 μg/m³. Drill bits designed for use with water may need to be replaced sooner if used dry.

Table VIII-7. Summary of Technological Feasibility of Control Technologies in the Mining Industry, by Commodity, Indicating Activity Groups Affected by Respirable Crystalline Silica Exposures

Commodity category	% samples ≤ 50 μg/m³	Total number of affected activity groups [a]	Number of activity groups for which the proposed PEL is achievable with engineering and administrative controls [b, c]	Number of activity groups for which the proposed PEL is NOT achievable with engineering and administrative controls	Feasibility finding, by commodity category
Metal	73	4	4	0	Feasible
Nonmetal	86	4	4	0	Feasible
Stone	79	4	4	0	Feasible
Crushed limestone	90	4	4	0	Feasible
Sand and Gravel	79	4	4	0	Feasible
Coal (underground and surface) [d]	93	7	7	0	Feasible
Overall	--	27	100%	0%	Feasible

Notes:

a) Activity groups include 1) production and development miners; 2) ore/mineral processing miners; 3) miners engaged in load/haul/dump activities; and 4) miners in all other occupations.

b) Engineering controls include wetting and water sprays, ventilation systems, enclosure of dusty processes, and operator enclosures (equipment cabs and control booths). For the purposes of this table, effective maintenance is also an engineering control.

c) Administrative controls encompass both mine operator policies and miner work practices, such as written operating procedures, miner training, keeping operator enclosure door and windows closed to exclude dust; or walking around, rather than through a dusty area.

d) Coal mines include three activity groups underground and four surface activity groups.

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b. Feasibility Findings for the Proposed Action Level

MSHA believes that mine operators can achieve exposure levels at or below the proposed action level of 25 μg/m³, for most miners by implementing additional engineering controls and more flexible and innovative administrative controls, in addition to the existing control methods already discussed in this technological feasibility analysis. MSHA notes that the exposure profiles in Table VIII–2 and Table VIII–3 for MNM mines, and Table VIII–4 and VIII–5 for coal mines indicate that mine operators have already achieved the proposed action level for at least half of the miners who MSHA has sampled in each commodity category. However, to do so reliably for all miners, operators would need to upgrade equipment and facility designs, particularly in mines with higher respirable crystalline silica concentrations, that may be due to an elevated silica content in materials.

One control option would be increased automation, such as expanding the use of existing autonomous or remote-controlled drilling rigs, roof bolters, stone cutting equipment, and packaging/bagging equipment. This type of automation can reduce exposures by increasing the distance between the equipment operator and the dust source. Other options include completely enclosing most processes and ventilating the enclosures with dust extraction equipment or controlling the speed of mining equipment (*e.g.,* longwall shearers, conveyors, dump truck emptying) and process equipment (*e.g.,* crushers, mills) to reduce turbulence that increases dust concentrations in air. Additionally, where compatible with the material, exposure levels can be reduced by increased wetting to constantly maintain the material, equipment, and mine facility surfaces damp through added water sprays and frequent housekeeping (*i.e.,* hosing down surfaces as often as necessary). In addition, vacuuming will minimize the amount of dust that becomes airborne and prevent dust that does settle on a surface from being resuspended in air.

Mines that only occasionally work with higher-silica-content materials may not be equipped with the controls required to achieve the proposed action level of 25 μg/m³, or they may not currently have procedures to ensure miners are protected when they do work with these materials. Examples of these activities include cutting roof or floor rock with a continuous mining machine in underground coal mines; packaging operations that involve materials from an unfamiliar supplier, including another mine; and rebuilding or repairing kilns. To address these activities, under the proposed rule, mine operators would have to add engineering controls to address any foreseeable respirable crystalline silica overexposures. Examples of additional controls include pre-testing batches of new raw materials; improving hazard communication when batches of incoming raw materials contain higher concentrations of crystalline silica, and

augmenting enclosure and ventilation (*e.g.,* adding ventilation to all crushing and screening equipment, increasing mine facility ventilation to 30 air changes per hour, and fully enclosing and ventilating all conveyor transfer locations). NIOSH (2019b, 2021a) describes all of the dust control methods described in this section, which are already used in mines, although to a less rigorous extent than would be necessary to reliably achieve exposure levels of 25 μg/m³ or lower for all miners.

MSHA preliminarily finds that the proposed action level of 25 μg/m³ is technologically feasible for most mines. This finding is based on the exposure profiles, presented in Table VIII–2 and Table VIII–3 for MNM mines, and Table VIII–4 and VIII–5 for coal mines, which shows that within each commodity category, the exposure levels are at or below 25 μg/m³ for at least half of the miners sampled. MSHA's finding is also based on the extensive control options documented by NIOSH, which can be used in combinations to achieve additional control of respirable crystalline silica. Although most mines would need to adopt and rigorously implement a number of the control options mentioned in this section, the technology exists to achieve this level and is already in use in mines.

C. Technological Feasibility of Respiratory Protection (Within Proposed Part 60)

Under the proposed rule, respiratory protection would only be allowed for temporary, non-routine use. MSHA has preliminarily determined that it is technologically feasible to limit respirator use to temporary, non-routine activities based on the Agency's knowledge of and experience with the mining industry, evidence presented by NIOSH (2019b, 2020a), and Tables VIII–2 through VIII–5 (exposure profiles for MNM and coal mines). These tables indicate that the proposed PEL (50 μg/m³) has already been achieved for approximately 82 percent of the MNM miners and approximately 93 percent of the coal miners sampled by MSHA.

Proposed § 60.14(b) requires that any miner unable to wear a respirator must receive a temporary job transfer to an area or to an occupation at the same mine where respiratory protection is not required. The proposed paragraph would also require that an affected miner continue to receive compensation at no less than the regular rate of pay in the occupation held by that miner immediately prior to the transfer. MNM mine operations have complied with the job transfer provisions under the existing standard in § 57.5060(d)(7) that states miners unable to wear a respirator must be transferred to work in an existing position in an area of the mine where respiratory protection is not required. Proposed § 60.14(b) is similar to these existing requirements. MSHA anticipates that mine operators would have a similar experience implementing the job transfer provisions of proposed § 60.14(b). Therefore, MSHA preliminarily finds that the proposed requirement in § 60.14(b) is technologically feasible.

For miners who would need to wear respiratory protection on a temporary and non-routine basis, proposed § 60.14(c)(1) would require the mine operator to provide NIOSH-approved atmosphere-supplying respirators or NIOSH-approved air-purifying respirators equipped with high-efficiency particulate filters in one of the following NIOSH classifications under 42 CFR part 84: 100 series or High Efficiency (HE). As previously discussed, MSHA preliminarily finds that particulate respirators meeting these criteria would offer the best filtration efficiency (99.97 percent) and protection for miners exposed to respirable crystalline silica and are widely available and used by most industries. This finding is based on the suitability of the three particulate classifications for respirable size particle filtration and the broad commercial availability of these NIOSH-approved particulate respirators.[58] NIOSH publishes a list of approved respirator models along with manufacturer/supplier information. In November 2022, the NIOSH-approved list contained 221 records on atmosphere-supplying respirator models, 160 records on elastomeric respirators with P–100 classification, and 23 records on filtering facepiece respirators with P–100 classification (NIOSH, 2022 list P–100 elastomeric, P–100 filtering facepiece, and atmosphere-supplying respirator models).[59] Based on this information, MSHA preliminarily finds that proposed § 60.14(c)(1) is technologically feasible.

Proposed § 60.14(c)(2) would incorporate the *ASTM F3387–19* ''*Standard Practice for Respiratory Protection*'' to ensure that the most current and protective respiratory protection practices would be implemented by operators who temporarily use respiratory protection to control miners' exposures to respirable crystalline silica. The Agency is also incorporating this respiratory protection consensus standard under §§ 56.5005, 57.5005, and 72.710. This proposed update is also addressed in the next section (see Technological feasibility of updated respiratory protection standards). Based on the information contained in that section, MSHA preliminarily finds that the proposed § 60.14(c)(2) is technologically feasible.

Based on information contained in this section, MSHA preliminarily finds that proposed § 60.14 is technologically feasible.

D. Technological Feasibility of Updated Respiratory Protection Standards (Amendments to 30 CFR Parts 56, 57, and 72)

1. Incorporation by Reference

Respirators are commonly used by miners as a means of protection against a multitude of respiratory hazards, including particulates, gases, and vapors. Respirators are needed in immediately life-threatening (*i.e.,* IDLH) situations as well as operations where engineering controls and administrative controls do not provide sufficient protection against respiratory hazards. Where respirators are used, they must seal and isolate the miner's respiratory system from the contaminated environment. The risk that a miner will experience an adverse health effect from a contaminant when relying on respiratory protection is a function of the toxicity or hazardous nature of the air contaminants present, the concentrations of the contaminants in the air, the duration of exposure, and the degree of protection provided by the respirator. When respirators fail to provide the proper protection, there is an increased risk of adverse health effects. Therefore, it is critical that respirators perform as they are designed.

Accordingly, MSHA is proposing to incorporate by reference ASTM F3387–19 under 30 CFR 56.5005, 30 CFR 57.5005, and 30 CFR 72.710. With this action, the Agency intends to assist mine operators in developing effective respiratory protection practices and programs that meet current industry standards. This proposed revision would better protect miners who temporarily wear respiratory protection.

The *American National Standards Practices for Respiratory Protection ANSI Z88.2–1969* is currently incorporated by reference in 30 CFR 56.5005, 30 CFR 57.5005, and 30 CFR

[58] Class 100 particulate respirators (currently the most widely used respirator filter specification in the U.S.) are available from numerous sources including respirator manufacturers, online safety supply companies, mine equipment suppliers, and local retail hardware stores.

[59] The NIOSH list of approved models does not guarantee that each model is currently manufactured. However, the list does not include obsolete models, and the more popular models are widely available, including in bulk quantities.

72.710.[60] Since MSHA issued these standards, respirator technology and knowledge on respirator protection have advanced and as a result, changes in respiratory protection standard practices have occurred. ASTM F3387–19 is based on the most recent consensus standard and provides more comprehensive and detailed guidance. MSHA believes that most mines that use respiratory protection are already following current respiratory protection practices and standards such as ANSI/ASSE Z88.2—2015 ''*Practices for Respiratory Protection*'' standard, its similar ASTM replacement (the F3387–19 standard), or OSHA 29 CFR 1910.134—*Respiratory protection.* ASTM F3387–19 standard practices are substantially similar to the standard practices included in ANSI/ASSE Z88.2–2015 or OSHA's respiratory standards.

2. Availability of Respirators

The updated respiratory protection standard reflects current practice at many mines that currently use respiratory protection and does not require the use of new technology. Thus, MSHA preliminarily finds that the proposed update is technologically feasible for affected mines of all sizes.

3. Respiratory Protection Practices

By incorporating the updated respiratory protection consensus standard (ASTM F3387–19), MSHA intends that mine operators would develop effective respiratory protection practices that meet the updated consensus standard and that would better protect miners from respirable hazards not yet controlled by other methods.

MSHA presumes that most mines with respiratory protection programs, and particularly those MNM mines that have operations under both MSHA and OSHA jurisdiction, are already following either the ANSI/ASSE Z88.2—2015 standard, the ASTM F3387–19 standard, or OSHA 1910.134. The respiratory protection program elements under ASTM F3387–19 are largely similar to those in the existing standard.

MSHA expects that some operators may need to adjust their current respiratory protection practices and standard operating procedures to reflect ASTM F3387–19 standard practices. Examples of adjustments include formalizing fit testing and respirator training annually; updating the training qualifications of respirator trainers, managers, supervisors, and others responsible for the respiratory protection program; reviewing the information exchanged with the physician or other licensed health care professional (PLHCP); and formalizing internal and external respiratory protection program reviews or audits.

Overall, MSHA preliminarily finds that the proposed amendments to existing parts 56, 57, and 72 are technologically feasible because the requirements of ASTM F3378–19 are already implemented at some mines.

E. Technological Feasibility of Medical Surveillance (Within Proposed Part 60)

Under the proposed rule, mine operators would be required to provide periodic medical examinations for each MNM miner, at no cost to the miner. The proposed medical surveillance standards would extend to MNM miners similar protections available to coal miners under 30 CFR 72.100. The requirements in proposed § 60.15 are consistent with the Mine Act's mandate to provide maximum health protection for miners.

Under the proposed standards, MNM miners new to the mining industry would receive an initial examination, within 30 days. If they are not new to mining, they are categorized as belonging to a group of workers who are eligible for an examination every 5 years. Workers who are new to mining, after they have their initial examination, would be provided another follow-up examination within 3 years. If the 3-year follow-up examination indicates any medical concerns associated with chest X-ray findings or decreased lung function, these miners are eligible to have another follow-up exam in 2 years. After this additional 2-year follow-up exam, or if the 3-year follow-up examination indicates no medical concerns associated with chest X-ray findings or decreased lung function, these miners will enter the category of miners eligible for periodic 5-year exams.

MSHA is proposing that medical examinations would be performed by a PLHCP or specialist. A medical examination would include a review of the miner's medical and work history and physical examination. The medical and work history would cover a miner's present and past work exposures, illnesses, and any symptoms indicating respirable crystalline silica-related diseases and compromised lung function. The medical examination would include a chest X-ray. The required chest X-ray would be required to be classified by a NIOSH-certified B Reader, in accordance with the Guidelines for the Use of the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses. The ILO recently made additional standard digital radiographic images available and has published guidelines on the classification of digital radiographic images (ILO 2022). These guidelines provide standard practices for detecting changes of pneumoconiosis, including silicosis, in chest X-rays. The proposed rule would also require spirometry test be part of the medical examination.

MSHA has preliminarily determined that it is technologically feasible for MNM mine operators to provide periodic examinations. The procedures required for initial and periodic medical examination are commonly conducted in the general population (*i.e.,* medical history, physical examination, chest X-ray, spirometry test) by a wide range of practitioners with varying medical backgrounds. Because the proposed medical examinations consist of procedures conducted in the general population and because MSHA would be giving MNM mine operators maximum flexibility in selecting a PLHCP who would be able to offer these services, MSHA anticipates that operators would not experience difficulty in finding PLHCPs who are licensed to provide these services.

In addition, in the case of classifying chest X-rays, MSHA has preliminarily determined that the availability of digital X-ray technology allows for electronic submission to remotely located B Readers for interpretation; therefore, MSHA anticipates that the limited number of B Readers in certain geographic locations would not be an obstacle for MNM operators. Overall, MSHA preliminarily finds that the proposed medical surveillance provisions are technologically feasible.

F. Conclusions

Based on MSHA's technological feasibility analysis, MSHA has determined that all elements of the proposed rule on *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* are technologically feasible.

IX. Summary of Preliminary Regulatory Impact Analysis and Regulatory Alternatives

A. Introduction

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

[60] ASTM 3387–19 is the revised version of ANSI/ASSE Z88.2–2015. In 2017, the Z88 respirator standards were transferred from ANSI/ASSE to ASTM International (source: F3387–19, Appendix XI).

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O.s 12866 and 13563 require that regulatory agencies assess both the costs and benefits of regulations.

A regulatory action is considered ''significant'' if it is likely to ''have an annual effect on the economy of $200 million or more . . .'' under E.O. 12866 Section 3(f)(1), as amended by E.O. 14094. The proposed rule ''Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection'' is a significant rule. To comply with E.O.s 12866 and 13563, MSHA has prepared a standalone PRIA for this proposed rule. A summary of the PRIA is presented below. The standalone PRIA contains detailed supporting data and explanation for the summary materials presented here, including the mining industry, costs and benefits, and economic feasibility. The standalone PRIA can be accessed electronically at *http://www.msha.gov* and has been placed in the rulemaking docket at *www.regulations.gov,* docket number MSHA–2023–0001. MSHA requests comments on all estimates of costs and benefits presented in this PRIA and on the data, assumptions, and methodologies the Agency used to develop the cost and benefit estimates.

B. Miners and Mining Industry

The proposed rule would affect mine operators and miners. This section provides information on the structure of the Metal/Nonmetal (MNM) and coal mining industries, including the revenue, number, employment by commodity and size; economic characteristics of MNM and coal mines; and the respirable crystalline silica exposure profiles for miners across different occupations in the MNM and coal industry. The data come from the U.S. Department of the Interior (DOI), U.S. Geological Survey (USGS); U.S. Department of Labor (DOL), Mine Safety and Health Administration (MSHA), Educational Policy and Development and Program Evaluation and Information Resources; the Statistics of US Businesses (SUSB); and the Energy Information Administration (EIA).

1. Structure of the Mining Industry

The mining industry can be divided into two major sectors based on commodity: (1) Metal/Nonmetal mines (hereafter referred to as MNM mines) and (2) coal mines with further distinction made regarding type of operation (*e.g.,* underground coal mines or surface coal mines). The MNM mining sector is made up of metal mines (copper, iron ore, gold, silver, etc.) and nonmetal mines. Nonmetal mines can be categorized into four commodity groups: (1) nonmetal (mineral) materials such as clays, potash, soda ash, salt, talc, and pyrophyllite; (2) sand and gravel, including industrial sand; (3) stone including granite, limestone, dolomite, sandstone, slate, and marble; and (4) crushed limestone.

MSHA categorizes mines by size based on employment. For purposes of this industry profile, MSHA has categorized mines into the following four groups for analytical purposes [61]—mines that employ: (1) 1–20 miners (Emp ≤20); (2) 21 to 100 miners (20< Emp ≤100); (3) 101 to 500 miners (100< Emp ≤500); and (4) 501 or more miners (500< Emp).

MSHA tracks mine characteristics and maintains a database containing the number of mines by commodity and size, number of employees, and employee hours worked. MSHA also collects data on the number of mining contractors, their employees, and employee hours. While contractors are issued a unique MSHA contractor identification number, they may work at any mine.

Table IX–1 presents an overview of the mining industry, including the number of MNM and coal mines, their employment, excluding contractors, and revenues by commodity and size. All data are current in reference to the year 2019. In 2019, the MNM mining sector of 11,525 mines employed 169,070 individuals, of which 150,928 were miners and 18,142 were office workers. There were 1,106 coal mines that reported production and that employed 52,966 individuals, of which 51,573 were miners and 1,393 were office workers.

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[61] Miner employment is based on the information submitted quarterly through the MSHA Form 7000–2, excluding Subunit 99—Office (professional and clerical employees at the mine or plant working in an office); *https://www.msha.gov/sites/default/files/Support_Resources/Forms/7000-2_0.pdf.*

Table IX-1. Profile of MNM and Coal Mines, by Mine Size, 2019

Mine Category	Range by Miner Employment	Revenues [a]		Number of Mines		Production Employees		Production Hours (thousands)		Total Employment	
		Millions in $ 2019	%	No.	%	No.	%	No.	%	No.	%
Metal	Emp <= 20	$504.7	1.9%	157	56.1%	851	2.3%	1,433.8	1.9%	999	2.5%
Metal	20 < Emp <= 100	$1,380.4	5.1%	39	13.9%	1,947	5.3%	3,921.3	5.1%	2,251	5.6%
Metal	100 < Emp <= 500	$11,298.0	42.0%	62	22.1%	15,060	40.7%	32,094.2	42.0%	16,508	40.7%
Metal	500 > Emp	$13,716.8	51.0%	22	7.9%	19,168	51.8%	38,965.3	51.0%	20,771	51.2%
Metal	***Total***	***$26,900.0***	***100.0%***	***280***	***100.0%***	***37,026***	***100.0%***	***76,414.7***	***100.0%***	***40,529***	***100.0%***
Non-Metal	Emp <= 20	$3,218.6	14.4%	645	71.9%	3,694	16.3%	6,397.5	14.4%	4,237	16.6%
Non-Metal	20 < Emp <= 100	$8,957.7	40.1%	207	23.1%	8,921	39.3%	17,805.0	40.1%	10,065	39.3%
Non-Metal	100 < Emp <= 500	$8,296.8	37.1%	42	4.7%	8,220	36.2%	16,491.4	37.1%	9,163	35.8%
Non-Metal	500 > Emp	$1,872.3	8.4%	3	0.3%	1,845	8.1%	3,721.6	8.4%	2,134	8.3%
Non-Metal	***Total***	***$22,345.4***	***100.0%***	***897***	***100.0%***	***22,680***	***100.0%***	***44,415.4***	***100.0%***	***25,599***	***100.0%***
Stone	Emp <= 20	$3,653.3	28.5%	2,002	83.1%	11,198	31.7%	20,035.5	28.5%	12,563	31.5%
Stone	20 < Emp <= 100	$5,623.9	43.8%	339	14.1%	14,779	41.9%	30,842.4	43.8%	16,824	42.2%
Stone	100 < Emp <= 500	$3,357.2	26.2%	67	2.8%	8,762	24.8%	18,411.6	26.2%	9,896	24.8%
Stone	500 > Emp	$200.4	1.6%	1	0.0%	539	1.5%	1,098.8	1.6%	602	1.5%
Stone	***Total***	***$12,834.8***	***100.0%***	***2,409***	***100.0%***	***35,278***	***100.0%***	***70,388.3***	***100.0%***	***39,885***	***100.0%***
Crushed Limestone	Emp <= 20	$5,836.3	45.8%	1,555	83.5%	11,771	48.8%	22,834.9	45.8%	13,495	49.7%
Crushed Limestone	20 < Emp <= 100	$5,790.4	45.5%	293	15.7%	10,480	43.5%	22,655.5	45.5%	11,641	42.9%
Crushed Limestone	100 < Emp <= 500	$1,102.4	8.7%	14	0.8%	1,856	7.7%	4,313.4	8.7%	2,002	7.4%
Crushed Limestone	500 > Emp	$0.0	0.0%	0	0.0%	0	0.0%	0.0	0.0%	0	0.0%
Crushed Limestone	***Total***	***$12,729.1***	***100.0%***	***1,862***	***100.0%***	***24,107***	***100.0%***	***49,803.8***	***100.0%***	***27,138***	***100.0%***
Sand and Gravel	Emp <= 20	$6,267.5	69.7%	5,879	96.7%	23,887	75.0%	39,673.3	69.7%	27,262	75.9%
Sand and Gravel	20 < Emp <= 100	$2,284.3	25.4%	188	3.1%	6,703	21.1%	14,459.5	25.4%	7,320	20.4%
Sand and Gravel	100 < Emp <= 500	$438.8	4.9%	10	0.2%	1,247	3.9%	2,777.6	4.9%	1,337	3.7%
Sand and Gravel	500 > Emp	$0.0	0.0%	0	0.0%	0	0.0%	0.0	0.0%	0	0.0%
Sand and Gravel	***Total***	***$8,990.7***	***100.0%***	***6,077***	***100.0%***	***31,837***	***100.0%***	***56,910.5***	***100.0%***	***35,919***	***100.0%***
MNM Total	**Emp <= 20**	**$19,480.5**	***23.2%***	**10,238**	***88.8%***	**51,401**	***34.1%***	**90,375.0**	***30.3%***	**58,556**	***34.6%***
MNM Total	**20 < Emp <= 100**	**$24,036.7**	***28.7%***	**1,066**	***9.2%***	**42,830**	***28.4%***	**89,683.7**	***30.1%***	**48,101**	***28.5%***
MNM Total	**100 < Emp <= 500**	**$24,493.3**	***29.2%***	**195**	***1.7%***	**35,145**	***23.3%***	**74,088.3**	***24.9%***	**38,906**	***23.0%***
MNM Total	**500 > Emp**	**$15,789.5**	***18.8%***	**26**	***0.2%***	**21,552**	***14.3%***	**43,785.7**	***14.7%***	**23,507**	***13.9%***
MNM Total	***Total***	***$83,800.0***	***100.0%***	***11,525***	***100.0%***	***150,928***	***100.0%***	***297,932.6***	***100.0%***	***169,070***	***100.0%***
Coal	Emp <= 20	$1,007.5	3.9%	707	63.9%	4,358	8.5%	9,077.4	7.7%	4,611	8.7%
Coal	20 < Emp <= 100	$3,225.6	12.6%	271	24.5%	11,814	22.9%	27,591.7	23.5%	12,145	22.9%
Coal	100 < Emp <= 500	$14,414.9	56.2%	116	10.5%	26,145	50.7%	59,897.7	51.0%	26,818	50.6%
Coal	500 > Emp	$7,001.6	27.3%	12	1.1%	9,256	17.9%	20,962.2	17.8%	9,392	17.7%
Coal	***Total***	***$25,649.6***	***100.0%***	***1,106***	***100.0%***	***51,573***	***100.0%***	***117,529.0***	***100.0%***	***52,966***	***100.0%***

[a] Coal Revenues were calculated using MSHA Production Figures in Short Tons by Rank: 650.3 million tons Bituminous Coal, 53.2 million tons Lignite Coal, 2.6 million tons Anthracite Coal; and EIA price's per short ton by Coal Rank: EIA Annual Coal Report 2019; Table 31 Average Sales Price of Coal by State And Rank, 2019; US Total: $58.93/ton Bituminous Coal, $19.86/ton Lignite Coal, $102.22/ton Anthracite Coal; https://www.eia.gov/coal/annual/archive/0584_2019.pdf. The revenues for MNM commodities are calculated by applying the proportion of revenues represented by each commodity among all MNM commodities in the 2017 SUSB data and applying that proportion to the 2019 production value for all industrial minerals reported by USGS.

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a. Metal Mining

There are 24 groups of metal commodities mined in the U.S. Metal mines, which represent about 2.4 percent (280 out of 11,525) of all MNM mines and employ roughly 24.5 percent of all MNM miners. Of these 280 mines, 157 employ 20 or fewer miners and 22 employ greater than 500 miners. Additionally, the 2019 MSHA data show that there are a total of 13,792 contract miners in the metal mining industry.

b. Non-Metal (Mineral) Mining

Thirty-five non-metal commodities are mined in the U.S., not including stone, and sand and gravel. Non-metal mines represent about 7.8 percent of all MNM mines and employ roughly 15 percent of all MNM miners. The majority of non-metal mines (71.9 percent) employ fewer than 20 miners and less than 1 percent employ more than 500 employees. In 2019, there were 11,346 contract miners in the non-metal mining industry.

c. Stone Mining

The stone mining subsector includes eight different stone commodities. Seven of the eight are further classified as either dimension stone or crushed and broken stone. Stone mines make up 20.9 percent of all MNM mines and employ 23.4 percent of all MNM miners. The majority of these mines (83.1 percent) employ less than 20 miners. In 2019, there were 18,559 contract miners in the stone mining industry.

d. Crushed Limestone

Crushed limestone mines make up 16.2 percent of all MNM mines and employ about the same percentage (16.0 percent) of all MNM miners. Of the 1,862 crushed limestone mines, 83.5 percent employ fewer than 20 miners, and there are no crushed limestone mines that employ over 500 miners. In 2019, there were 9,605 contract miners in the crushed limestone mining industry.

e. Sand and Gravel Mining

Sand and gravel mines account for 52.7 percent of all MNM mines and employ 21.1 percent of all MNM miners. Nearly all (96.7 percent) of these mines employ fewer than 20 employees. In 2019, MSHA data show that there were 7,512 contract miners in the sand and gravel mining industry.

f. Coal

In the coal sector, 707 mines (63.9 percent) employed fewer than 20 miners. Overall, coal mine employment in 2019 was 52,966, of which 51,573 were miners and the remaining 1,393 were office workers. Additionally, there were a total of 22,003 contract miners in the coal mining industry in 2019.

2. Economic Characteristics of the Metal/Non-Metal Mining Industry

The value of all MNM mining output in 2019 was estimated at $83.8 billion (U.S. Department of Interior, 2019). Metal mines, which include iron, gold, copper, silver, nickel, lead, zinc, uranium, radium, and vanadium mines, contributed $26.9 billion. In the USGS Mineral Commodity Summaries, nonmetals, stone, sand and gravel, and crushed limestone are combined in to one commodity group called industrial minerals. MSHA estimated the production value of each individual commodity by applying the proportion of revenues represented by each among all commodities in the SUSB and applying that proportion to the 2019 production value for all industrial minerals reported by USGS. This approach yielded the following estimates: metal production was valued at $26.9 billion, non-metal production at $22.3 billion, stone mining at $12.85 billion, sand and gravel at $9.0 billion, and crushed limestone at $12.7 billion.

Production in the U.S. coal sector amounted to 706.1 million tons in 2019.[62] To estimate coal revenues in 2019, MSHA combined production estimates with prices per ton. Mine production data was taken from MSHA quarterly data and the coal price per ton was taken from the 2019 EIA Annual Coal Report. As shown in Table IX–1, total coal revenues in 2019 equaled $25.6 billion.

The U.S. coal mining sector produces three major types of coal: bituminous, lignite, and anthracite. According to MSHA data, bituminous operations account for approximately 92.1 percent of total coal production in short tons, and 91.9 percent of all coal miners. Lignite operations account for roughly 7.5 percent of total coal production and 6.2 percent of coal miners. Anthracite operations account for 0.4 percent of coal production and 1.9 percent of coal miners.

C. Cost-Benefit Analysis

The PRIA is based on MSHA's Preliminary Risk Analysis and the Technological Feasibility analysis. The PRIA presents estimated benefits and costs of the proposed rule for informational purposes only. Under the Mine Act, MSHA is not required to use estimated net benefits as the basis for its decision. MSHA requests comments on the methodologies, baseline, assumptions, and estimates presented in the PRIA and also asks for any data or quantitative information that may be useful in evaluating the estimated costs and benefits associated with the proposed rule. The PRIA assesses the costs and benefits in the MNM and coal industries of reducing miners' exposures to silica to 50 μg/m^3 for a full shift, calculated as an 8-hour time weighted average (TWA) and of complying with the standard's ancillary requirements. The PRIA also assesses the costs and benefits from requiring medical surveillance of MNM miners. It also assesses the costs and benefits from revising the existing respiratory protection standards. MSHA is proposing to incorporate by reference ASTM F3387–19, ''Standard Practice for Respiratory Protection'' (ASTM F3387–19). ASTM F3387–19 would replace the 1969 American National Standards Institute (ANSI) ''Practices for Respiratory Protection.''

MSHA estimates the proposed rule would have an annualized cost of $57.6 million in 2021 dollars at a real discount rate of 3 percent. Of this cost, over 55 percent is attributable to exposure monitoring; 30 percent to medical surveillance; 10 percent to engineering, improved maintenance and repair, and administrative controls; 2.4 percent related to the selection, use, and maintenance of approved respirators in accordance with ASTM F3387–19, respiratory protection practices; and 1.8 percent to additional respiratory protection (*e.g.,* when miners need temporary respiratory protection from exposure at the proposed PEL when it would not have been necessary at the existing PEL). MSHA further estimates that the MNM sector will incur $52.7 million (91 percent), and the coal sector will incur $4.9 million (9 percent) in annualized compliance costs (see Table IX–2).

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[62] Source: MSHA MSIS Data (reported on MSHA Form 7000–2).

Table IX-2. Summary of Estimated Compliance Costs by Provision and Commodity, 2021 (in Millions of 2021 $)

Provision or Sector	Number of Mines	0 Percent Real Discount Rate		3 Percent Real Discount Rate		7 Percent Real Discount Rate	
		Annualized Cost	Percent	Annualized Cost	Percent	Annualized Cost	Percent
All Mines by Provision							
Exposure Monitoring		$30.60	54.5%	$32.02	55.6%	$34.30	57.3%
Exposure Controls		$5.65	10.1%	$5.75	10.0%	$5.90	9.9%
Respiratory Protection		$1.03	1.8%	$1.03	1.8%	$1.03	1.7%
Medical Surveillance		$17.49	31.2%	$17.37	30.2%	$17.20	28.7%
Subtotal, Part 60 Costs		*$54.76*	*97.6%*	*$56.17*	*97.6%*	*$58.43*	*97.6%*
ASTM 2019		$1.36	2.4%	$1.40	2.4%	$1.46	2.4%
Total, All Mines	***12,631***	***$56.12***	***100.0%***	***$57.57***	***100.0%***	***$59.89***	***100.0%***
All Mines by Sector							
Total, All Mines	***12,631***	***$56.12***	***100.0%***	***$57.57***	***100.0%***	***$59.89***	***100.0%***
Metal/Nonmetal, Total	11,525	$51.31	91.4%	$52.67	91.5%	$54.85	91.6%
Coal, Total	1,106	$4.81	8.6%	$4.90	8.5%	$5.04	8.4%

Note: Medical surveillance cost is the average cost under the assumed participation rates of 75 percent and 25 percent.

In its analysis, MSHA annualizes all costs using 3 percent and 7 percent discount rates as recommended by OMB. MSHA bases the annualization periods for expenditures on equipment life cycles and primarily uses a 10-year annualization period for one-time costs and 20-year for medical surveillance. However, MSHA annualizes the benefits of the proposed rule over a 60-year period to reflect the time needed for benefits to reach the steady-state values projected in MSHA's PRA. Therefore, MSHA's complete analysis of this rule is 60 years (which corresponds to 45 years of working life and 15 years of retirement for the current miner population). MSHA holds the employment and production constant over this period for purposes of the analysis.[63]

For both MNM and coal mines, the estimated costs to comply with the proposed PEL (50 μg/m³), assumes that all mines are compliant with the existing PEL of 100 μg/m³ for MNM mines (for a full shift, calculated as an 8-hour TWA) and 85.7 μg/m³ for coal mines (for a full shift, calculated as an 8-hour TWA).

MSHA estimates that:

- The proposed respirable crystalline silica rule will result in a total of 799 lifetime avoided deaths (63 in coal and 736 in MNM mines) and 2,809 lifetime avoided morbidity cases (244 in coal and 2,566 in MNM mines) once it is fully effective (*i.e.,* beginning 60 years post rule promulgation through year 120 such that all miners, working and retired, have been exposed *only* under the proposed PEL) (see Table IX–3).
- Over the first 60 years, annual cases avoided will increase gradually to the steady-state values (*i.e.,* long-run per-year averages). Upon reaching the steady-state values, annual cases avoided will be constant from year 60 onward because all miner cohorts will have identical lifetime risks. From Table IX–4, in the first 60 years, the proposed rule would result in a total of 410 avoided deaths (377 in MNM and 33 in Coal) and 1,420 avoided morbidity cases (1,298 in MNM and 122 in Coal), which are the benefits MSHA monetized in its benefits analysis.
- The total benefits of the proposed respirable crystalline silica rule from these avoided deaths and morbidity cases are $175.7 million per year in 2021 dollars.

—The majority (60.7 percent) of these benefits ($108.0 million) are attributable to avoided mortality due to non-malignant respiratory disease (NMRD) ($52.8 million), silicosis ($28.1 million), and end-stage renal disease (ESRD) ($19.9 million), and lung cancer ($7.2 million).

—Benefits from avoided morbidity due to silicosis are $53.2 million per year: $48.7 million for MNM mines and $4.6 million for coal mines (see Table IX–5).

—Benefits from avoided morbidity that precedes fatal cases associated with NMRD, silicosis, renal disease, and lung cancer, are $14.5 million: $13.3 million for MNM mines and $1.2 million for coal mines (see Table IX–5).

[63] This modeling strategy implicitly assumes that the ten-year cost annualization repeats five more times to cover the same 60-year analytic period as the benefits model. Thus, one-time costs incurred in the first year implicitly repeat in years 11, 21, 31, 41 and 51. This may introduce a tendency toward overestimation of compliance costs.

Table IX-3. Estimated Cases of Avoided Lifetime Mortality and Morbidity Attributable to the Proposed Respirable Crystalline Silica Rule

Health Outcome	Total Lifetime Avoided Cases [a]		
	MNM	Coal	Total
Avoided Morbidity			
Silicosis	2,566	244	2,809
Avoided Morbidity Total (Net of Silicosis Fatalities)	**2,566**	**244**	**2,809**
Avoided Mortality			
NMRD (net of silicosis mortality)	366	35	402
Silicosis	174	12	186
ESRD	139	12	150
Lung Cancer [b]	56	5	61
Avoided Mortality Total	**736**	**63**	**799**

[a] Cases include full-time-equivalent contract miners and assume compliance with the existing limits.
[b] Lung cancer estimates assume a 15-year lag between exposure and health effect.

Table IX-4. Estimated Cases of Avoided Mortality and Morbidity Attributable to the Proposed Respirable Crystalline Silica Rule over 60 Years (Regulatory Analysis Time Horizon)

Health Outcome	Total Avoided Cases over 60 Years [a]		
	MNM	Coal	Total
Avoided Morbidity			
Silicosis	1,298.0	121.7	1,419.7
Avoided Morbidity Total (Net of Silicosis Fatalities)	**1,298.0**	**121.7**	**1,419.7**
Avoided Mortality			
NMRD (net of silicosis mortality)	186.8	16.4	203.2
Silicosis	94.8	8.1	102.9
ESRD	69.7	5.9	75.5
Lung Cancer [b]	26.0	2.3	28.2
Avoided Mortality Total	**377.3**	**32.6**	**409.9**

Numbers may not add up due to rounding
[a] Cases include full-time-equivalent contract miners and assume compliance with the existing limits.
[b] Lung cancer estimates assume a 15-year lag between exposure and health effect.

Table IX-5. Estimated Benefits over 60 Years for the Proposed Respirable Crystalline Silica Rule Annualized at a 3 Percent Real Discount Rate (in Millions 2021 $)

Health Outcome	MNM	Coal	Total
Avoided Morbidity (Not Preceding Mortality)			
Silicosis (Net of Silicosis Mortality)	$48.7	$4.6	$53.2
Avoided Morbidity (Not Preceding Mortality) Total	**$48.7**	**$4.6**	**$53.2**
Avoided Mortality			
NMRD (Net of Silicosis Mortality)	$48.5	$4.2	$52.8
Silicosis	$25.9	$2.2	$28.1
ESRD	$18.3	$1.6	$19.9
Lung Cancer	$6.6	$0.6	$7.2
Avoided Mortality Total	**$99.4**	**$8.6**	**$108.0**
Avoided Morbidity (Preceding Mortality)			
NMRD (Net of Silicosis Mortality)	$6.3	$0.5	$6.9
Silicosis	$3.7	$0.3	$4.0
ESRD	$2.5	$0.2	$2.7
Lung Cancer	$0.8	$0.1	$0.9
Avoided Morbidity (Preceding Mortality) Total	**$13.3**	**$1.2**	**$14.5**
Grand Total	**$161.4**	**$14.3**	**$175.7**

MSHA acknowledges that its benefit estimates are influenced by the underlying assumptions and that the long-time frame of this analysis (first 60 years) is a source of uncertainty. The main assumptions underlying these estimates of avoided mortality and morbidity include the following:

- Employment and production are held constant over the 60 years—the analysis period of the proposed rule.[64]
- Any miners currently exposed above the existing PELs are exposed to levels of respirable crystalline silica at existing standards (100 μg/m³ for a full-shift exposure, calculated as an 8-hour TWA at MNM mines and 85.7 μg/m³ for a full-shift exposure, calculated as an 8-hour TWA at coal mines).
- The proposed rule will result in miners being exposed at or below the proposed PEL (50 μg/m³).
- Miners have identical employment and hence exposure tenures (45 years).

The assumptions inherent in developing the exposure-response functions for the modeled health outcomes are reasonable throughout the exposure ranges relevant to this benefits analysis. In the final rule, the agency plans to augment the Regulatory Impact Analysis, for informational purposes, so as to incorporate different durations of working life based on exposure information, while continuing to also present calculations based on a 45-year working life assumption.

In addition to the above quantified health benefits of the lower PEL, MSHA projects that there would be additional benefits from requiring approved respirators be selected, used, and maintained in accordance with the requirements, as applicable, of ASTM F3387–19. The ASTM standard reflects developments in respiratory protection since MSHA issued its existing standards. These developments include OSHA's research and rulemaking on respiratory protection. Under the proposed rule, MSHA would require operators' respiratory protection plans to include minimally acceptable respiratory program elements: program administration; standard operating procedures (SOPs); medical evaluation; respirator selection; training; fit testing; and maintenance, inspection, and storage. Given the uncertainty about the current state of operator respiratory protection practices, MSHA did not quantify the benefits that would be realized by requiring approved respirators to be selected, used, and maintained in accordance with ASTM F3387–19.

MSHA believes the proposed rule would lower exposures to respirable crystalline silica and respirable coal mine dust. The available exposure-response models do not account for separate health effects from exposure to mixed dust that contains both respirable crystalline silica and coal mine dust. However, MSHA anticipates that there would be additional unquantified benefits provided by the proposed rule—reduced adverse health outcomes attributable to respirable coal mine dust exposure, such as CWP.[65] The proposed rule does quantify the benefits of avoided deaths and illnesses from reducing coal miners' exposures to respirable crystalline silica. Among coal miners, MSHA estimates 35 lifetime avoided deaths and illnesses from NMRD (see Table IX–3).

Finally, MSHA also expects that the proposed rule's medical surveillance provisions would reduce mortality and morbidity from respirable crystalline silica exposure among MNM miners. The initial mandatory examination that assesses a new miner's baseline pulmonary status, coupled with periodic examinations, would assist in the early detection of respirable crystalline silica related illnesses. Early detection of illness often leads to early intervention and treatment, which may slow disease progression and/or

[64] MSHA recognizes that it is impossible to predict economic factors over such a long period. Given known information and forecast limitations, MSHA believes this is a reasonable assumption.

[65] The following references document miner exposures that could be simultaneously below the PEL for RCMD but exceed the PEL for silica: Rahimi, E., Shekarian, Y., Shekarian, N. et al. Investigation of respirable coal mine dust (RCMD) and respirable crystalline silica (RCS) in the U.S. underground and surface coal mines. Sci Rep 13, 1767 (2023). *https://doi.org/10.1038/s41598-022-24745-x.*

Doney BC, Blackley D, Hale JM, Halldin C, Kurth L, Syamlal G, Laney AS. Respirable coal mine dust in underground mines, United States, 1982–2017. Am J Ind Med. 2019 Jun;62(6):478–485. doi: 10.1002/ajim.22974. Epub 2019 Apr 29. PMID: 31033017; PMCID: PMC6800046.

Doney BC, Blackley D, Hale JM, Halldin C, Kurth L, Syamlal G, Laney AS. Respirable coal mine dust at surface mines, United States, 1982–2017. Am J Ind Med. 2020 Mar;63(3):232–239. doi: 10.1002/ajim.23074. Epub 2019 Dec 9. PMID: 31820465; PMCID: PMC7814307.

improve health outcomes. However, as noted, MSHA lacks data to quantify these additional benefits.

The net benefits of the proposed rule are the differences between the estimated benefits and costs. Table IX–6 shows estimated net benefits using alternative discount rates of 0, 3, and 7 percent for benefits and costs. As is observed from the table, the choice of discount rate has a significant effect on annualized costs, benefits, and hence net benefits. While the net benefits of the proposed respirable crystalline silica rule vary considerably depending on the choice of discount rate used to annualize costs and benefits, total benefits exceed total costs under each discount rate considered. MSHA's estimate of the net annualized benefits of the proposed rule, using a uniform discount rate for both costs and benefits of 3 percent, is $118.2 million a year with the largest share ($108.8 million; 92.0 percent) attributable to the MNM sector.

Table IX-6. Annualized Costs, Benefits, and Net Benefits of MSHA's Proposed Respirable Crystalline Silica Rule (in Millions 2021 $)

Impact Category	MNM			Coal			Total		
	0%	3%	7%	0%	3%	7%	0%	3%	7%
Benefits									
Mortality	$160.0	$99.4	$49.4	$13.8	$8.6	$4.3	$73.8	$108.0	$53.8
Morbidity Preceding Mortality	$19.6	$13.3	$7.5	$1.7	$1.2	$0.7	$21.3	$14.5	$8.2
Morbidity Not Preceding Mortality	$67.5	$48.7	$31.3	$6.3	$4.6	$2.9	$73.8	$53.2	$34.2
Total	***$247.1***	***$161.4***	***$88.2***	***$21.8***	***$14.3***	***$7.9***	***$268.9***	***$175.7***	***$96.2***
Costs									
Exposure Monitoring	$27.3	$28.7	$30.9	$3.3	$3.4	$3.5	$30.6	$32.0	$34.3
Exposure Controls	$4.8	$4.9	$5.0	$0.8	$0.9	$0.9	$5.6	$5.7	$5.9
Respiratory Protection	$1.0	$1.0	$1.0	$0.1	$0.1	$0.1	$1.0	$1.0	$1.0
Medical Surveillance	$17.5	$17.4	$17.2	--	--	--	$17.5	$17.4	$17.2
ASTM Update	$0.8	$0.8	$0.8	$0.6	$0.6	$0.6	$1.4	$1.4	$1.4
Total	***$51.3***	***$52.6***	***$54.8***	***$4.8***	***$4.9***	***$5.0***	***$56.1***	***$57.5***	***$59.9***
Net Benefits	***$195.8***	***$108.8***	***$33.4***	***$17.0***	***$9.4***	***$2.9***	***$212.8***	***$118.2***	***$36.3***

Note: Medical surveillance cost is the average cost under the assumed participation rate of 75 percent and 25 percent.

[a] For the purpose of simplifying the estimation of the monetized benefits of avoided illness and death, MSHA simply added the monetized benefits of morbidity preceding mortality to the monetized benefits of mortality at the time of death, and both would be discounted at that point. In theory, however, the monetized benefits of morbidity should be recognized (and discounted) at the onset of morbidity, as this is what a worker's willingness to pay is presumed to measure—that is, the risk of immediate death or an immediate period of illness that a worker is willing to pay to avoid—a practice that would increase the present value of discounted morbidity benefits. A parallel tendency toward underestimation occurs with regard to morbidity not preceding mortality, since it implicitly assumes that the benefits occur at retirement, as per the Buchanan model, but many, if not most, of the

2/0 or higher silicosis cases will have begun years before (with those classifications, in turn, preceded by a 1/0 classification). As a practical matter, however, the Agency lacks sufficient data at this time to refine the analysis in this way.

D. Economic Feasibility

To establish economic feasibility, MSHA uses a revenue screening test—whether the yearly costs of a rule are less than 1 percent of revenues, or are negative (*i.e.,* provide net cost savings)—to presumptively establish that compliance with the regulation is economically feasible for the mining industry. The resulting ratio of annualized compliance costs to revenues from the screener analysis should be interpreted with care. If annualized compliance costs comprise less than 1 percent of revenue, the Department of Labor presumes that the affected entities can incur the compliance costs without significant economic impacts.

For the MNM and coal mining sectors, MSHA estimates the projected impacts of the rule by calculating the average annualized compliance costs for each sector as a percentage of total revenues. To be consistent with costs that are calculated in 2021 dollars, MSHA first inflated mine revenues expressed in 2019 to their 2021 equivalent using the GDP Implicit Price Deflator. Due to inflation, the nominal value of a dollar in 2021 is estimated to be about 5.4 percent higher than in 2019.

Table IX-7. Total Mines, Revenues and Employment by Sector, 2019

Mine Sector	Mines	2019 Revenues (millions of dollars), Inflated to 2021 Dollars	Miners Including Contractors
Total	***12,631***	***$115,348***	***284,778***
Metal/Nonmetal	11,525	$88,316	211,202
Coal	1,106	$27,032	73,576

Table IX–8 presents the projected impacts of the proposed rule. The table compares aggregate annualized compliance costs for MNM and coal sectors at a 0 percent, 3 percent, and 7 percent real discount rate to total annual revenues. At a 3 percent real discount rate, total aggregate annualized compliance costs are projected to be $57.6 million (including both 30 CFR part 60 and 2019 ASTM Upgrade Costs), while aggregate revenues are estimated to be $115.3 billion in 2021 dollars. Thus, the mining industry is expected to incur compliance costs that comprise 0.05 percent of total revenues.

For the MNM sector, MSHA estimates that the annualized costs of the proposed rule (including ASTM update costs) would be $52.7 million at 3 percent discount rate, which is approximately 0.06 percent of total annual revenue of $88.3 billion ($52.7 million/$88.3 billion) for MNM mine operators. For the coal sector, MSHA estimates that the annualized cost of the proposed rule would also be $4.9 million at 3 percent, which is approximately 0.02 percent of total annual revenue of $27.0 billion ($4.9 million/$27.0 billion) for coal mine operators.

The ratios of screening analysis are well below the 1.0 percent threshold, and therefore, MSHA has concluded that the requirements of the proposed rule are economically feasible, and no sector of the industry will likely incur significant costs.

Table IX-8. Estimated Annualized Compliance Costs as Percent of Mine Revenues by Sector, 2021

Mine Sector	2019 Revenues (millions 2021 dollars)	Annualized Costs (millions of 2021 dollars) 3 Percent Real Discount Rate		Annualized Costs (millions of 2021 dollars) 7 Percent Real Discount Rate	
		Compliance Costs	Cost as % of Revenues	Compliance Costs	Cost as % of Revenues
30 CFR Part 60 Costs					
Total	***$115,348***	***$56.17***	***0.05%***	***$58.43***	***0.05%***
Metal/Nonmetal	$88,316	$51.89	0.06%	$54.03	0.06%
Coal	$27,032	$4.28	0.02%	$4.40	0.02%
30 CFR Part 60 + 2019 ASTM Upgrade Costs					
Total	***$115,348***	***$57.57***	***0.05%***	***$59.89***	***0.05%***
Metal/Nonmetal	$88,316	$52.67	0.06%	$54.85	0.06%
Coal	$27,032	$4.90	0.02%	$5.04	0.02%

E. Regulatory Alternatives

The proposed rule presents a comprehensive approach for lowering miners' exposure to respirable crystalline silica. The proposal includes the following regulatory provisions: lowering miners' respirable crystalline silica exposure to a PEL of 50 μg/m³ for a full-shift exposure, calculated as an 8-hour TWA; initial baseline sampling for miners who are reasonably expected to be exposed to respirable crystalline silica; periodic sampling for miners who are at or above the proposed action level of 25 μg/m³ but at or below the proposed PEL of 50 μg/m³; and semi-annual evaluation of changing mining processes that would reasonably be expected to result in new or increased exposures.

In developing the proposed rule, MSHA considered two regulatory alternatives. Both alternatives include less stringent monitoring provisions than the proposed monitoring provisions. One of the alternatives also combines less stringent monitoring with a more stringent PEL. MSHA discusses the regulatory options in the sections below, from least expensive to most expensive. Both alternatives would retain the respiratory protection updates and medical surveillance from the proposed rule.

1. Regulatory Alternative #1: Changes in Sampling and Evaluation Requirements

Under this alternative, the proposed PEL would remain unchanged at 50 μg/m³ and the proposed action level would remain unchanged at 25 μg/m³. Further, mine operators would conduct: (1) baseline sampling for miners who may be exposed to respirable crystalline silica at or above the proposed action level of 25 μg/m³, (2) periodic sampling twice per year for miners who are at or above the proposed action level of 25 μg/m³ but at or below the proposed PEL of 50 μg/m³, and (3) annual evaluation of changing mining processes or conditions that would reasonably be

expected to result in new or increased exposures.

Mine operators would be required to undertake sampling under this regulatory alternative and would thus incur compliance costs. However, monitoring requirements under this alternative are less stringent than the requirements under the proposed rule because the number of miners to be sampled for baseline sampling would be smaller than in the proposed rule and the frequency of periodic sampling and evaluations of changing mining processes or conditions are set at half the frequency of the proposed monitoring requirements. Therefore, the cost of compliance will be lower under this alternative. MSHA estimates that annualized monitoring costs will total $17.3 million for this alternative (at a 3 percent discount rate), compared to $32.0 million for the proposed monitoring requirements, resulting in an estimated $14.7 million in lower costs per year (Table IX–9).

Although this alternative does not eliminate exposure monitoring, the requirements are minimal relative to the monitoring requirements under the proposed rule. However, MSHA believes it is necessary for mine operators to establish a solid baseline for any miner who is reasonably expected to be exposed to respirable crystalline silica. In addition, quarterly monitoring helps mine operators correlate mine conditions to miner exposure levels and see exposure trends more rapidly than would result from semi-annual or annual sampling. This would enable mine operators to take measures necessary to ensure continued compliance with the PEL. Further, more frequent monitoring would enable mine operators to ensure the adequacy of controls at their mines and better protect miners' health. These benefits cannot be quantified, but they are nevertheless material benefits that increase the likelihood of compliance.

Table IX-9. Summary of Part 60 Annualized Compliance Costs (in Millions of 2021 $), Regulatory Alternative 1 and Proposed Requirements: All Mines, 2021

Mine Sector	0 Percent Real Discount Rate		3 Percent Real Discount Rate		7 Percent Real Discount Rate	
	Annualized Cost (millions of dollars)	Percent of Proposed	Annualized Cost (millions of dollars)	Percent of Proposed	Annualized Cost (millions of dollars)	Percent of Proposed
Regulatory Alternative #1: Changes in Sampling and Evaluation Requirements						
Exposure Monitoring	$16.29		$17.33		$19.02	
Exposure Controls	$5.65		$5.75		$5.90	
Respiratory Protection	$1.03		$1.03		$1.03	
Medical Surveillance	$17.49		$17.37		$17.20	
Total, Part 60 Costs	***$40.46***	***73.9%***	***$41.48***	***73.8%***	***$43.15***	***73.8%***
Proposed Requirements						
Exposure Monitoring	$30.60		$32.02		$34.30	
Exposure Controls	$5.65		$5.75		$5.90	
Respiratory Protection	$1.03		$1.03		$1.03	
Medical Surveillance	$17.49		$17.37		$17.20	
Total, Part 60 Costs	***$54.76***	***100.0%***	***$56.17***	***100.0%***	***$58.43***	***100.0%***

MSHA also believes that requiring more frequent periodic sampling would provide mine operators with greater confidence that they are in compliance with the proposed rule. Because of the variable nature of miner exposures to airborne concentrations of respirable crystalline silica, maintaining exposures below the proposed action level provides mine operators with reasonable assurance that miners would not be exposed to respirable crystalline silica at levels above the PEL on days when sampling is not conducted. MSHA believes that the benefits of the proposed sampling requirements justify the additional costs relative to Regulatory Alternative 1.

2. Regulatory Alternative #2: Changes in Sampling and Evaluation Requirements and the Proposed PEL

Under this regulatory alternative, the proposed PEL would be set at 25 μg/m^3; mine operators would install whatever controls are necessary to meet this PEL; and no action level would be proposed. Further, mine operators: (1) would not be required to conduct baseline sampling or periodic sampling; (2) would conduct semi-annual evaluations of changing conditions; and (3) would sample as frequently as necessary to determine the adequacy of controls.

Mine operators would not be required to undertake baseline or periodic sampling. However, mine operators would be required to perform semi-annual evaluations of changing mining processes or conditions. Further, mine operators would be required to perform post-evaluation sampling when the operators determine as a result of the semi-annual evaluation that miners may be exposed to respirable crystalline silica at or above proposed PEL at 25 μg/m^3. When estimating the cost of the proposed monitoring requirements, MSHA assumes that the number of samples for corrective action and semi-annual evaluation are relatively small (2.5 percent of miners) because samples from sampling to determine the adequacy of controls and from MSHA can both be used to meet the requirements. Since this alternative

does not require periodic sampling, MSHA increases samples after each evaluation to 10 percent of miners to ensure the monitoring requirements can be met.

This alternative also sets the proposed PEL at 25 μg/m³. In addition to the estimated cost of compliance with a PEL of 50 μg/m³, mine operators would incur additional engineering control costs to meet a PEL of 25 μg/m³. To estimate these additional engineering control costs, MSHA largely uses the same methodology as for mines affected at the proposed PEL of 50 μg/m³.

a. Number of Mines Affected Under Regulatory Alternative 2

MSHA first estimated the number of mines expected to incur the cost of implementing engineering controls to reach the more stringent PEL. After excluding mines that are affected at the proposed PEL of 50 μg/m³ (to avoid double-counting), MSHA finds that 3,477 mines (2,991 MNM mines and 486 coal mines) operating in 2019 had at least one sample at or above 25 μg/m³ but below 50 μg/m³.[66]

To this number, MSHA adds the 1,226 affected mines expected to incur costs to reach the proposed PEL of 50 μg/m³. Based on its experience and knowledge, MSHA does not expect the mines that installed engineering controls to meet the PEL of 50 μg/m³ will also be able to comply with a PEL of 25 μg/m³. For example, to comply with the proposed PEL of 50 μg/m³, a mine might need to add the engineering controls necessary to achieve an additional 10 air changes per hour over that achieved by existing controls, which are costed in the following section. However, such a mine facility would then need to add an additional 10 air changes per hour to meet the more stringent PEL of 25 μg/m³, which is not costed in the following section. Thus, MSHA expects that the 1,226 affected mines will incur additional costs to meet the PEL of 25 μg/m³ specified under this alternative.

MSHA estimates a total of 4,703 mines will incur costs to purchase, install, and operate engineering controls to meet the PEL of 25 μg/m³ under this alternative. MNM mines account for 4,087 (87 percent) and coal mines 616 (13 percent). Further, of the estimated 4,087 MNM mines and 616 coal mines, 1,096 MNM mines (27 percent) and 130 coal mines (21 percent) are also estimated to incur compliance costs to reach the proposed PEL of 50 μg/m³.

b. Estimated Engineering Control Costs Under Regulatory Alternative 2

MSHA identified potential engineering controls that would enable mines with respirable crystalline silica dust exposures at or above 25 μg/m³ but below 50 μg/m³ categories to meet the PEL of 25 μg/m³ under consideration for this alternative. While MSHA assumes that mine operators will base such decisions on site-specific conditions such as mine layout and existing infrastructure, MSHA cannot make further assumptions about the specific controls that might be adopted and instead assumes the expected value of purchased technologies should equal the simple average of the technologies listed in each control category.

Where more precise information is unavailable, MSHA assumes operating and maintenance (O&M) costs to be 35 percent of initial capital expenditure and installation cost, when appropriate, will be equal to the initial capital expenditure (Table IX–10). MSHA also assumes the larger capital expenditure controls will have a 30-year service life. MSHA welcomes public comment concerning the engineering controls selected for this analysis and the assumptions used to estimate installation and O&M costs for these controls.

Table IX-10. Selected Engineering Controls to Decrease Respirable Crystalline Silica Dust Exposure by Capital Expenditure Cost Range Under Regulatory Alternative 2

Engineering Control	2021 Capital Cost	2021 Installation Cost [a]	2021 O&M Cost [b]	Expected Service Life [c]
Minimal capital expenditure				
Stone saw enclosure	$0	$0	$1,378	1
Larger capital expenditure				
Increase facility ventilation from 20 to 30 air changes per hour	$157,000	$157,000	$9,153	30
Full length of conveyor enclosed and ventilated	$896,373	$896,373	$51,988	30
Crusher/grinder: appropriate size ventilation for air flow	$184,640	$184,640	$10,709	30
Plumbing for hose installations, floor re-sloping and troughs	$43,076	$43,076	$3,951	30
Average	***$256,218***	***$256,218***	***$15,436***	***24.2***

[a] Unless otherwise specified, installation costs are assumed to be equal to capital cost.
[b] Unless otherwise specified, annual O&M costs are assumed to be equal to 35 percent of capital cost.
[c] Service life assumed to be 10 years if not otherwise specified.

However, the difficulty of meeting a PEL of 25 μg/m³ is such that MSHA's experience suggests a single control from Table IX–10 will not be sufficient. For example, respirable crystalline silica dust exposure at such a stringent limit

[66] About 8,053 of mines active in 2019 either did not have a sample > 25 μg/m³ or did not have a sample in the last 5 years.

as 25 μg/m³ is likely to occur at more than one area of the mine; in addition to increasing ventilation to a crusher/grinder, enclosing and ventilating the conveyor belt mine would be necessary to reduce concentrations below the limit. Similarly, increasing facility ventilation from 20 to 30 air changes per hour may not be adequate to meet the limit; 40 air changes per hour might be necessary. Therefore, MSHA assumes mine operators will purchase and install at least two of the engineering controls listed in Table IX–10. This may be a conservative assumption.

Table IX–11 presents the average annualized engineering control costs per mine and total annualized engineering control costs by mine sector. Because the service life of nearly all components is expected to be 30 years, the costs of all engineering controls are annualized over 30 years. At a 3 percent real discount rate, the average annualized engineering control costs are about $94,300 per mine, resulting in an additional cost of $443.6 million if the PEL is set at 25 μg/m³ instead of 50 μg/m³.

Table IX-11. Estimated Annualized Costs as a Simple Average per Mine and Total Engineering Controls per Mine Under Regulatory Alternative 2, by Category, 2021

	Annualized Cost of Engineering Controls at Specified Real Discount Rate		
	0 Percent	3 Percent	7 Percent
Annualized Engineering Control Costs per Mine, Over All Controls	$73,574	$94,328	$127,356
Total Annualized Engineering Control Costs by Mine Sector (millions) [a]			
Total	***$346.0***	***$443.6***	***$599.0***
MNM	$300.7	$385.5	$520.5
Coal	$45.3	$58.1	$78.5

[a] Based on an estimated 616 Coal and 4,087 MNM mines, for 4,703 total affected mines.

Table IX–12 summarizes the estimated annualized cost of this alternative under consideration. At a 3 percent real discount rate, exposure monitoring costs less than the proposed rule; however, this lower cost is more than offset by the increased control costs necessitated by the requirement that mines maintain respirable crystalline silica exposure levels below 25 μg/m³. At an estimated annualized cost of $491.2 million, this alternative would cost nearly eight times more than the proposed requirements.

Table IX-12. Summary of Part 60 Annualized Compliance Costs (in Millions of 2021 $) Under Regulatory Alternative 2 and Proposed Requirements: All Mines, 2021

Mine Sector	0 Percent Real Discount Rate		3 Percent Real Discount Rate		7 Percent Real Discount Rate	
	Annualized Cost (millions of dollars)	Percent of Proposed	Annualized Cost (millions of dollars)	Percent of Proposed	Annualized Cost (millions of dollars)	Percent of Proposed
Regulatory Alternative #2: Changes in PEL and Sampling and Evaluation Requirements						
Exposure Monitoring	$25.1		$24.8		$24.4	
Exposure Controls	$350.3		$447.9		$603.3	
Respiratory Protection	$1.0		$1.0		$1.0	
Medical Surveillance	$17.5		$17.4		$17.2	
Total, Part 60 Costs	***$393.9***	***719.3%***	***$474.39***	***874.4%***	***$646.0***	***1105.3%***
Proposed Requirements						
Exposure Monitoring	$30.6		$32.0		$34.3	
Exposure Controls	$5.7		$5.8		$5.9	
Respiratory Protection	$1.0		$1.0		$1.0	
Medical Surveillance	$17.5		$17.4		$17.2	
Total, Part 60 Costs	***$54.8***	***100.0%***	***$56.2***	***100.0%***	***$58.4***	***100.0%***

This alternative requires exposure monitoring that is more stringent than Regulatory Alternative 1, but less stringent than the proposed requirements. In addition, Regulatory Alternative 2 increases miner protection by proposing to set the PEL at 25 μg/m³, resulting in measurable avoided mortality and other health benefits. Table IX–13 presents the avoided morbidity and mortality cases over the 60-year regulatory analysis time horizon under this alternative. Under this alternative, the avoided 60-year mortality is expected to be 981, which is 2.4 times higher than the expected avoided mortality of 410 under a proposed PEL of 50 μg/m³. The avoided 60-year morbidity under the regulatory alternative of 25 μg/m³ is expected to be 1,948, which is 1.4 times higher than the expected avoided 60-year morbidity of 1,420 under the proposed PEL of 50 μg/m³.

Table IX-13. Estimated Cases of Avoided Mortality and Morbidity over 60 Years (Regulatory Analysis Time Horizon) Following Rule Promulgation Under Regulatory Alternative 2

Health Outcome	Total Avoided Cases over 60 Years [a]		
	MNM	Coal	Total
Avoided Morbidity			
Silicosis	1,736.9	211.5	1,948.4
Avoided Morbidity Total (Net of Silicosis Fatalities)	1,736.9	211.5	1,948.4
Avoided Mortality			
NMRD (net of silicosis mortality)	408.7	57.8	466.4
Silicosis	206.0	25.6	231.5
ESRD	193.4	27.3	220.8
Lung Cancer [b]	54.7	7.3	62.0
Avoided Mortality Total	**862.8**	**118.0**	**980.7**

[a] Cases include full-time-equivalent contract miners and assume compliance with the current limits.

[b] Lung cancer estimates assume a 15-year lag between exposure and health effect.

Table IX–14 presents the benefits associated with this avoided morbidity and mortality. The expected total benefits, discounted at 3 percent, are $365.5 million, which is twice the expected total benefits of $175.7 million under the proposed PEL of 50 μg/m³. Under this regulatory alternative, these benefits are made up of $258.0 million due to avoided mortality, $34.5 million due to morbidity preceding mortality, and $73.0 million due to morbidity not preceding mortality. However, when compared to the annualized costs, the net benefits of this alternative are negative at both a 3 percent and 7 percent real discount rate.

Table IX-14. Annualized Monetized Benefits over 60 Years (Regulatory Analysis Time Horizon) Following Rule Promulgation (in Millions of 2021 $) Under Regulatory Alternative 2, by Health Outcome and Discount Rate

Health Outcome	MNM			Coal			Total		
	0%	3%	7%	0%	3%	7%	0%	3%	7%
Avoided Morbidity (Not Preceding Mortality)									
Silicosis (Excluding Silicosis Deaths)	$90.3	$65.1	$41.8	$11.0	$7.9	$5.1	$101.3	$73.0	$46.9
Avoided Morbidity (Not Preceding Mortality) Total	**$90.3**	**$65.1**	**$41.8**	**$11.0**	**$7.9**	**$5.1**	**$101.3**	**$73.0**	**$46.9**
Mortality									
NMRD (Excluding Silicosis Deaths)	$175.7	$106.3	$49.6	$24.9	$15.0	$7.0	$200.6	$121.2	$56.6
Silicosis	$84.3	$56.1	$32.1	$10.3	$7.0	$4.1	$94.4	$63.1	$36.2
ESRD	$82.7	$50.6	$24.8	$11.6	$7.2	$3.6	$94.3	$57.8	$28.3
Lung Cancer	$24.0	$13.9	$5.9	$3.2	$1.9	$0.8	$27.3	$15.8	$6.7
Avoided Mortality Total	**$366.6**	**$226.9**	**$112.4**	**$50.1**	**$31.1**	**$15.4**	**$416.7**	**$258.0**	**$127.8**
Avoided Morbidity (Preceding Mortality)									
NMRD (Excluding Silicosis Deaths)	$21.2	$13.9	$7.3	$3.0	$2.0	$1.0	$24.2	$15.8	$8.3
Silicosis	$10.7	$8.0	$5.3	$1.3	$1.0	$0.7	$12.0	$9.0	$6.0
ESRD	$10.1	$6.7	$3.8	$1.4	$1.0	$0.5	$11.5	$7.7	$4.3
Lung Cancer	$2.8	$1.8	$0.8	$0.4	$0.2	$0.1	$3.2	$2.0	$0.9
Avoided Morbidity (Preceding Mortality) Total	**$44.8**	**$30.3**	**$17.1**	**$6.1**	**$4.2**	**$2.3**	**$51.0**	**$34.5**	**$19.5**
Grand Total	**$501.7**	**$322.4**	**$171.3**	**$67.2**	**$43.1**	**$22.8**	**$568.9**	**$365.5**	**$194.1**

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MSHA solicits further comment on the extent to which these or other regulatory alternatives (including different ways of calculating respirable crystalline silica concentration) may change the effects of the proposed rule.

X. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires preparation of an Initial Regulatory Flexibility Analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 601- 612. Because MSHA's proposed rule on respirable crystalline silica, including the incorporation of ASTM F3387–19 by reference, would regulate the mining industry, the proposed rule falls within the purview of the RFA. MSHA has evaluated the impact of the proposed rule on small entities in this IRFA. MSHA's analysis is presented in the following.

Description of the Reasons Why MSHA is Considering Regulatory Action

Based on its review of the health effects literature, MSHA has preliminarily determined that occupational exposure to respirable crystalline silica causes silicosis and other diseases. Based on its preliminary risk analysis, MSHA has also determined that under its existing standards, miners face a risk of material impairment of health or functional capacity from exposures to respirable crystalline silica.

Based on these preliminary determinations, MSHA proposes to amend its existing standards to better protect miners against occupational exposure to respirable crystalline silica, a carcinogen, and to improve respiratory protection for all airborne contaminants. The proposed rule would establish for mines of all sizes, a PEL of 50 μg/m³ for a full shift, calculated as an 8-hour TWA, for all miners, and an action level of 25 μg/m³ for a full-shift exposure, calculated as 8-hour TWA. MSHA's proposal would also include other requirements to protect miner health, such as periodic exposure sampling and corrective actions to be taken when miners' exposures exceed the PEL. MSHA also proposes to replace existing requirements for respiratory protection and to incorporate by reference the ASTM F3387–19 *Standard Practice for Respiratory Protection.* MSHA believes that the proposed changes would significantly improve health protections for all miners over the course of their working lives.

Objectives of, and Legal Basis for, the Proposed Rule

The proposed rule would fulfill MSHA's statutory obligation to ''promulgate improved mandatory health . . . standards to protect'' miners' health under the Mine Act, as amended. 30 U.S.C. 801(g). The Mine Act requires the Secretary of Labor (Secretary) to develop and promulgate improved mandatory health or safety standards to prevent hazardous and unhealthy conditions and protect the health and safety of the nation's miners. 30 U.S.C. 811(a). The Secretary must set standards to assure, based on the best available evidence, that no miners will suffer material impairment of health or functional capacity from exposure to toxic materials or harmful physical agents over their working lives. 30 U.S.C. 811(a)(6)(A). Section 103(h) of the Mine Act gives the Secretary the authority to promulgate standards involving recordkeeping and reporting. 30 U.S.C. 813(h). Additionally, section 508 of the Mine Act gives the Secretary the authority to issue regulations to carry out any provision of the Mine Act. 30 U.S.C. 957.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The proposed rule would affect MNM and coal mining operations. To determine the number of small entities subject to the proposed rule, MSHA reviewed the North American Industrial Classification System (NAICS), the standard used by Federal statistical agencies in classifying business establishments, as well as information from the Office of Advocacy of the Small Business Administration (SBA). MSHA used its data from the MSHA Standardized Information System (MSIS) to identify the responsible party for each mine. MSHA then combined that information with the size classification information.

First, MSHA determined that mining operations that fall into 25 NAICS-based industry classifications may be subject to the proposed rule. These industry categories and their accompanying six-digit NAICS codes are shown in Table X–1.[67]

Second, MSHA matched the NAICS classifications with SBA small-entity size standards (based on number of employees) to determine the number of small entities within each of the respective NAICS codes. See Table X–1.

Third, MSHA counted the number of small-entity controllers in each NAICS code, after determining that a ''controller'' who owns and controls a mine as the appropriate unit of this IRFA analysis (based on SBA guidance) (Small Business Administration 2017). A controller is a parent company owning or controlling one or more mines. A controller can also be a firm, whereas a mine can be an establishment. Table X–1 shows the count of all controllers and a count of small-entity controllers in each NAICS code. Some ''unique controllers'' are included in more than one NAICS code because they own or control multiple mines, each producing a different commodity. For this analysis, however, MSHA single-counted these unique controllers; for example, a controller who owns three mines in three different NAICS codes was only counted once.

Based on this methodology, MSHA estimated that in 2021, there were a total of 5,879 controllers, 5,007 of which were small-entity controllers. Many controllers owned one or two mines, while some controllers owned hundreds of mines nationwide (or worldwide). The 5,007 small-entity controllers owned a total of 8,240 mines out of 11,791 mines in operation in 2021.[68]

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[67] The NAICS classifications used in this analysis are drawn from a recent version of the NAICS (though, for reasons described below, not the latest version, which was published in January 2022). SBA established definitions of small entities for each of the categories in the earlier version, which were effective in August 2019. This version of NAICS categories was needed for this analysis, in order for MSHA to cross-tabulate (or crosswalk) its data on mines and controllers with Bureau of Census data on revenues by NAICS codes, where these Census data were organized by the same NAICS codes that were in the earlier version. No comparable revenue data, at this writing, had yet been revised to the most recent NAICS categories, which prevented MSHA from using those categories. MSHA identified 25 NAICS categories (in the previous system) that accounted for all mining activities.

[68] The number of controllers and mines examined in this regulatory flexibility analysis are those specifically known to operate in 2021. The year 2021 is the most current year for which complete information were available. Such information about controllers as parent companies might include, for example, knowledge of whether the parent company is a large, multinational corporation, which has bearing on this regulatory flexibility analysis. Because the benefit-cost analysis performed on the proposed rule did not need this kind of detailed information about controllers, it was able to have a broader scope to include data from other years besides 2021, which it did. As a result, the benefit cost analysis included a larger number of mines (and affected mines) and controllers. The key factor for this regulatory flexibility analysis is the estimated ratio of the regulatory cost per revenue for controllers, as reflected by the most current data. The estimation of this ratio is robustly addressed in MSHA's analysis of the 5,879 controllers in 2021 (which is not impacted by the exclusion of other years in this analyis).

Table X-1. Small Entities Potentially Affected by MSHA's Proposed Rule

NAICS Code	Industry Description	SBA Size Standards in Maximum Number of Employees*	Number of All Controllers	Number of Small-Entity Controllers
211120	Crude Petroleum Extraction	1,250	4	0
211130	Natural Gas Extraction	1,250	4	0
212111	Bituminous Coal and Lignite Surface Mining	1,250	9	1
212112	Bituminous Coal Underground Mining	1,500	278	182
212113	Anthracite Mining	250	67	54
212210	Iron Ore Mining	750	19	8
212221	Gold Ore Mining	1,500	108	65
212222	Silver Ore Mining	250	8	2
212230	Copper, Nickel, Lead, and Zinc Mining	750	30	4
212291	Uranium-Radium-Vanadium Ore Mining	250	3	1
212299	All Other Metal Ore Mining	750	12	4
212311	Dimension Stone Mining and Quarrying	500	536	488
212312	Crushed and Broken Limestone Mining and Quarrying	750	763	583
212313	Crushed and Broken Granite Mining and Quarrying	750	103	76
212319	Other Crushed and Broken Stone Mining and Quarrying	500	856	707
212321	Construction Sand and Gravel Mining	500	3,462	3,095
212322	Industrial Sand Mining	500	214	161
212324	Kaolin and Ball Clay Mining	750	9	3
212325	Clay and Ceramic and Refractory Minerals Mining	500	134	81
212391	Potash, Soda, and Borate Mineral Mining	750	11	2
212392	Phosphate Rock Mining	1,000	7	1
212393	Other Chemical and Fertilizer Mineral Mining	500	27	12
311942	Spice and Extract Manufacturing	500	2	1
327310	Cement Manufacturing	1,000	27	1
327410	Lime Manufacturing	750	30	17

*SBA, effective August 19, 2019.

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Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

As explained earlier, the proposed rule would establish a PEL of 50 μg/m³ and an action level of 25 μg/m³ for a full-shift exposure, calculated as 8-hour TWA. The proposed rule would also include other requirements. Examples include baseline, periodic, and corrective action sampling, semi-annual evaluations, medical surveillance, respiratory protection, and recordkeeping.

With regard to the paperwork burden on small entities, MSHA's proposed rule would create new information collection requests for the mining industry. As described in greater detail in Section XI below, these requirements include the collection of information involving: (1) exposure monitoring—samplings and semi-annual evaluations, (2) corrective actions taken, (3) miners unable to wear respirators, and (4) medical surveillance for MNM miners. Table XI–2 displays an annual estimate of information collection burden for the whole mining industry. Compliance costs on small entities that include recordkeeping costs are discussed below.

Estimation of the Compliance Costs and Relative Burden to Small Entities

MSHA estimated the average annual regulatory cost per small-entity controller (based on a 3 percent discount rate), as well as the average annual revenue per small-entity controller. MSHA estimated, for each controller, the additional annual cost of the proposed regulation as a proportion of that controller's annual revenue. The average of these proportions (weighting controllers equally) was 0.122 percent, below a 3 percent threshold used for significant impact. That is, for every $1 million in revenue earned by a controller, the average regulatory cost was estimated to be $1,220.

Total Compliance Cost. MSHA estimated that the proposed rule would have an average cost of $60.23 million per year in 2021 dollars at a real discount rate of 3 percent. The estimated costs for the proposed rule would represent the additional costs necessary for mine operators to achieve full compliance with the proposed rule.

Compliance Costs by Small-Entity Controllers. Because mines (as well as controllers) vary in the scale of their operations, MSHA first estimated additional regulatory costs on a per-miner basis. MSHA anticipated that the additional regulatory costs per miner would vary across the six major commodity categories: coal, metal, nonmetal, stone, crushed limestone, and sand and gravel. MSHA analyzed employment data linked with controller data. By combining this information with compliance cost information, MSHA derived estimates of the regulatory costs for small-entity controllers. MSHA then estimated the regulatory cost for each of the 5,007 small-entity controllers identified in 2021. See the average annual regulatory cost per controller in Table X–2.

Revenues by Small-Entity Controllers. MSHA estimated revenues for each small-entity controller. The Agency estimated revenues per employee, by mine, and by controller, using data published by the U.S. Bureau of Census in their report, ''Statistics of U.S. Businesses'' (SUSB).[69] The SUSB data provided revenue estimates for enterprises in each NAICS code and for each ''size category'' (based on number of employees) within each NAICS code. The enterprise data considered controllers that had operations in more than one NAICS code. MSHA summed the estimated revenue for the establishments within the same NAICS code to create multiple enterprises with different NAICS codes and compare constructed enterprises with the SUSB data to estimate the revenue for each of these size-category-specific enterprises. This methodology was relevant for the ''largest'' of small-entity controllers, which controlled more than one mine, sometimes operating in different NAICS categories. Most small-entity controllers operated only one mine, meaning that no summation was required because only the number of employees in a single mine needed to be counted.

MSHA estimated revenues for each small-entity controller. Some small-entity controllers had mines belonging to different NAICS codes. This factor precluded MSHA from being able to precisely categorize small-entity controllers by NAICS code. MSHA estimated each small-entity controller's revenues.[70]

Some of the small-entity controllers may also have operations in non-mining industries. If so, total revenues, including those from non-mining operations, would be higher than estimated here, and the ratios of regulatory costs to revenues shown in the summary table may be overestimated.

MSHA developed estimates of the number of miners for each small-entity controller, and for each NAICS category within each controller's activities. MSHA then combined these data with SUSB data on revenues by NAICS category and size category to generate estimated revenues for each small-entity controller. See the estimated average annual revenue per controller in Table X–2.

Ratio of Compliance Cost to Revenue. From the two sets of estimates described above—costs and revenues—for each small-entity controller, MSHA generated estimates of the ratios of regulatory cost to revenue, for each controller. Table X–2 shows the number of controllers, average annual regulatory costs, average annual revenue, and average cost as a percent of revenue.

[69] U.S. Census Bureau, ''Statistics of U.S. Businesses,'' released May 2021. *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* Data in the report were in reference to the year 2017, which MSHA adjusted to 2021 dollars. Data on revenues are presented in the report under the equivalent term ''receipts.'' MSHA converted the 2017 revenues to 2021 dollars using the GDP Implicit Price Deflator published by the Bureau of Economic Analysis October 26, 2022, Table 1.1.9 Implicit Price Deflators for Gross Domestic Product, Series A191RD. *https://apps.bea.gov/histdata/fileStructDisplay.cfm?HMI=7&DY=2022&DQ=Q3&DV=Advance&dNRD=October-28-2022.* The index was 107.749 for 2017 and 118.895 for 2021, creating an adjustment factor (from 2017 to 2021 dollars) of 118.895/107.749 or 1.103.

[70] In a small number of cases (in terms of NAICS codes and size categories) the SUSB data were incomplete. In these cases, MSHA imputed revenue/employee ratios based on closely related data for comparable NAICS-size categories. MSHA then used these imputed revenue/employee ratios to estimate the revenues of some small-entity controllers, by the methodology just described.

Table X-2. Annualized Compliance Costs to Revenues for a Typical Small-Entity Controller

Small-Entity Controller	Number of Controllers	Average Annual Regulatory Cost Per Controller (in 2021 $) at a 3 Percent Discount Rate	Average Annual Revenue Per Controller (in 2021 $)	Average of Cost as a Percent of Revenue (Unweighted Average of the Percentages Among All Controllers)*
Coal Small-Entity Controllers	235	$ 3,191	$ 12,816,000	0.025
MNM Small-Entity Controllers	4,772	$ 4,250	$ 3,822,000	0.127
Total	5,007	$ 4,200	$ 4,243,000	0.122

*Note that because column displays the unweighted average of the controller-level percentages across all controllers, it is not equivalent to the ratio of the average cost among all controllers and the average revenue among all controllers in the previous two columns.

Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Significant Alternatives and Their Impact on Small Entities

MSHA considered two alternatives in the proposed rule. Under Alternative 1, the proposed PEL would remain unchanged at 50 μg/m³ and the proposed action level would remain unchanged at 25 μg/m³. Further, mine operators would conduct: (1) baseline sampling for miners who may be exposed to respirable crystalline silica at or above the proposed action level of 25 μg/m³, (2) periodic sampling twice per year, and (3) annual evaluation of changing mining processes or conditions that would reasonably be expected to result in new or increased exposures. Under Alternative 2, the proposed PEL would be set at 25 μg/m³; mine operators would install whatever controls are necessary to meet this PEL; and no action level would be proposed. Further, mine operators would: (1) not be required to conduct baseline sampling or periodic sampling, (2) conduct semi-annual evaluations of changing conditions, and (3) sample as frequently as necessary to determine the adequacy of controls. Additional detail on the two regulatory alternatives MSHA considered can be found in IX. *Summary of Preliminary Regulatory Impact Analysis and Regulatory Alternatives* and in the standalone PRIA document.

MSHA believes the proposed rule would provide improved health protections for miners and would be achievable for all mines. In developing the proposed rule, MSHA has included flexibilities for operators in the implementation of updated respiratory protection standard, which would reduce the burden on small entities. MSHA has made the following determinations regarding the two alternatives considered:

- Alternative 1, ''Changes in Sampling and Evaluation Requirements,'' would reduce overall costs to the mining industry by 26.2 percent, for costs calculated at both a 3 percent and 7 percent discount rate. These reduced costs would be proportionally experienced by small entities. The average costs as a percent of revenues for small entities would then be reduced (relative to the proposed rule) from 0.12 percent to 0.09 percent.
- Alternative 2, ''Changes in Sampling and Evaluation Requirements and the Proposed PEL,'' would increase overall costs to the mining industry by 701.9 percent, for costs calculated at a 3 percent discount rate, and by 930.2 percent for costs calculated at a 7 percent discount rate. The average costs as a percent of revenues for small entities would then rise (relative to the proposed rule) from 0.12 percent to 0.98 percent, based on a 3 percent discount rate, and from 0.12 percent to 1.259 percent based on a 7 percent discount rate.

MSHA is seeking comments or additional information from stakeholders on whether there are alternatives the Agency should consider that would accomplish the objectives of this rulemaking while reducing the impact on small entities.

Conclusion

MSHA estimated that small-entity controllers would be expected to incur, on average, additional regulatory costs equaling approximately 0.122 percent of their revenues (or $1,220 for every $1 million in revenues).

As required under the RFA, MSHA is complying with its obligation to consult with the SBA's Chief Counsel for Advocacy on this proposed rule and on this initial regulatory flexibility analysis. Consistent with Agency's practice, notes of any meetings with the Chief Counsel for Advocacy's office on this proposed rule, or any written communications, will be placed in the rulemaking record.

XI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) provides for the Federal Government's collection, use,

and dissemination of information. The goals of the Paperwork Reduction Act include minimizing paperwork and reporting burdens and ensuring the maximum possible utility from the information that is collected under 5 CFR part 1320. The Paperwork Reduction Act requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before requesting or requiring ''a collection of information'' from the public.

As part of the Paperwork Reduction Act process, agencies are generally required to provide a notice in the **Federal Register** concerning each proposed collection of information to solicit, among other things, comment on the necessity of the information collection and its estimated burden, as required in 44 U.S.C. 3506(c)(2)(A). To comply with this requirement, MSHA is publishing a notice of proposed collection of information in the proposed rule titled, Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection.

This rulemaking would require the creation of a new information collection as well as modification to the burdens for existing collections. As required by the Paperwork Reduction Act, the Department has submitted information collections, including a new information collection and revisions of two existing collections, to OMB for review to reflect new burdens and changes to existing burdens.

I. New Information Collection Under Proposed Part 60, Respirable Crystalline Silica

Under proposed part 60 entitled ''Respirable Crystalline Silica,'' some new burdens would apply to all mine operators, and other burdens would apply to only some mine operators. Below, the new information collection burden that would be created by proposed part 60 is discussed.

Proposed § 60.16 lists all the recordkeeping requirements related to proposed part 60. Each of the requirements are discussed below:

Proposed § 60.12 would require mine operators to make a record for each sampling and each evaluation conducted pursuant to this section. The sampling record would consist of the sample date, the occupations sampled, and the concentrations of respirable crystalline silica and respirable dust. The mine operator would also retain laboratory reports on sampling results. The semi-annual evaluation record would include the date of the evaluation and a record of the mine operator's evaluation of any changes in mining operations that may reasonably be expected to result in new or increased respirable crystalline silica exposures. In addition, the mine operator would be required to post the sampling and evaluation records and the laboratory report on the mine bulletin board and, if applicable, by electronic means, for the next 31 days, upon receipt. All records would be retained for at least 2 years from the date of each sampling or evaluation.

Proposed § 60.13 would require mine operators to make a record of corrective actions and the dates of the corrective actions. The corrective action records would be retained for at least 2 years from the date of each corrective action.

Proposed § 60.14 would require mine operators to retain a record of the written determination by a PLHCP that a miner who may be required to use a respirator is unable to wear a respirator. The written determination record would be retained for the duration of a miner's employment plus 6 months.

Proposed § 60.15 would require MNM mine operators to obtain a written medical opinion from the PLHCP or specialist within 30 days of a miner's medical examination. The written medical opinion would contain the date of the medical examination, a statement that the examination has met the requirements of this proposed section, and any recommended limitations on the miner's use of respirators. The written medical opinion record would be retained for the duration of a miner's employment plus 6 months.

II. Changes to Existing Information Collections

This proposed rulemaking would result in non-substantive changes to existing information collection packages. One change under OMB Control Number 1219–0011 is to occur after 1219–0NEW, Respirable Crystalline Silica Standard, is approved by OMB. The other change is the discontinuance of the existing information collection package under OMB Control Number 1219–0048 which is also to occur after OMB approval of 1219–0NEW, Respirable Crystalline Silica Standard.

OMB Control Number 1219–0011, Respirable Coal Mine Dust Sampling, involves records for quarterly sampling of respirable dust in coal mines. The supporting statement references quartz and a reduced standard for respirable dust when quartz is present; however, there is no specific recordkeeping requirement that is associated with those references. Due to changes in the proposed rule, MSHA would make a non-substantive change to the supporting statement by removing such references. However, there would be no changes in paperwork burden and costs in this information collection.

OMB Control Number 1219–0048, Respirator Program Records, involves recordkeeping requirements under 30 CFR parts 56 and 57 for MNM mines when respiratory protection is used. MSHA is proposing to update the existing respiratory protection standard and permit mine operators to select the requirements of the standard that are applicable to their mines. This proposed change would eliminate the paperwork burden associated with respiratory protection resulting in the request to discontinue the existing information collection.

A. Solicitation of Comments

Pursuant to the Paperwork Reduction Act, MSHA has prepared and submitted an information collection request (ICR) to OMB for the collection of information requirements identified in this proposed rule for OMB's review in accordance with 44 U.S.C. 3507(d). MSHA is soliciting comments concerning the proposed information collection related to respirable crystalline silica. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

B. Proposed Information Collection Requirements

I. *Type of Review:* New Collection.

OMB Control Number: 1219–0NEW.

1. *Title:* Respirable Crystalline Silica Standard.

2. *Description of the ICR:* The proposed rule on respirable crystalline silica contains collection of information requirements that would assist miners and mine operators in identifying exposures to respirable crystalline silica

in order to track actual and potential occupational exposure and action taken to control such exposure.

There are provisions of this proposed rule that would take effect at different times after the implementation of this proposed rule, and there are provisions that would have different burden hours, burden costs, and responses each year. Therefore, MSHA shows the estimates of burden hours, burden costs, and responses in three separate years.

3. *Summary of the Collection of Information:* Highlighted below are the key assumptions, by provision, used in the burden estimates in Table XI–1:

Proposed § 60.12—Exposure Monitoring

ICR. Proposed § 60.12 would require mine operators to make a record for each baseline sampling, corrective action sampling, periodic sampling, semi-annual evaluation, and post-evaluation sampling, as previously described.

Number of respondents. For proposed § 60.12, the respondents would consist of all active mines because operators of active mines are assumed to perform baseline sampling and conduct semi-annual evaluations.

MSHA counts the number of active mines in 2019, defining an active mine as one that had at least 520 employment hours (equivalent to 1 person working full time for a quarter) in at least one quarter of 2019. Using this definition, MSHA estimates that a total of 12,631 mines (11,525 MNM mines and 1,106 coal mines) would generate sampling and evaluation records.

Annual number of responses. The estimated average annual number of responses would be 142,408, including 24,439 for baseline sampling, 9,237 for sampling after corrective actions, 64,116 for periodic sampling, 42,103 for semi-annual evaluation recording and posting, and 2,513 for post-evaluation sampling.

MSHA assumes that all the active mines (12,631 mines) would conduct baseline sampling once in the first year. In succeeding years, about 253 new mines would conduct baseline sampling with an average of 5.6 samples per mine. The estimated number of periodic samplings is calculated based on the following factors: the number of miners with sampling results at or above the proposed action level (25 $\mu g/m^3$) but at or below the PEL (50 $\mu g/m^3$), the percent of miners needed for representative samples, and the number of quarters mines would be in operation. In year 1, MSHA expects the sampling to begin in the second half of the year, thereby decreasing the number of samples by half. As a result, MSHA estimates that an annual average of 64,116 periodic samples would be conducted in the first three years. Furthermore, MSHA assumes that all 12,631 mines would record semi-annual evaluation results twice a year—except in year 1, when it would be done once—and then post those results on a mine bulletin board, or if applicable, by electronic means. MSHA estimates mines would conduct sampling as a result of their semi-annual evaluations and an average of four miners would be sampled, resulting in an annual average of 2,513 samples.

MSHA estimates that about 22 percent of active mines (2,771 mines in total) would have at least one miner overexposed to respirable crystalline silica. MSHA further estimates that the 2,771 mines that would then conduct corrective action sampling for about four areas per mine. In year 1, they would sample in half as many areas.

Estimated annual burden. The estimated average annual burden would be 31,392 hours, including 6,110 hours for baseline sampling, 2,309 for corrective action sampling, 16,029 hours for periodic sampling, 6,316 hours for semi-annual evaluation recording and posting, and 628 hours for post-evaluation sampling. MSHA estimates that it would take 15 minutes to record the sampling results, 15 minutes to record the results of a semi-annual evaluation, and 3 minutes to post each of the evaluation results on the mine bulletin board, and, if applicable, by electronic means.

Proposed § 60.13—Corrective Actions

ICR. Proposed § 60.13 would require mine operators to make a record of corrective actions, as previously described.

Number of respondents. For proposed § 60.13, only those mines with at least one miner exposure above the proposed PEL are assumed to carry out the proposed requirement. MSHA estimates that about 22 percent of active mines (2,771 mines in total) would have at least one miner overexposed to respirable crystalline silica.

Annual number of responses. The estimated average annual number of responses would be 14,922, including 9,237 for corrective action records, and 5,685 for miner respirator records. MSHA estimates that the 2,771 mines that will be required to conduct and record corrective actions will do so for about four mine areas, except in year 1, when it would be done in half as many mine areas. MSHA further estimates this will affect 6,822 miners per year—except in year 1, when half as many miners would be affected—with each miner requiring a record of the miner being given access to a respirator until the corrective action is taken.

Estimated annual burden. The estimated average annual burden would be 1,054 hours, including 769.7 for corrective action records and 284.3 for miner respirator records. MSHA estimates that it takes five minutes to record a corrective action and the date. On average, it takes three minutes to note a miner's access to a respirator.

Proposed § 60.14—Respiratory Protection

ICR. Proposed § 60.14 would require mine operators to retain a record of the determination by a PLHCP that a miner who may be required to use a respirator is unable to wear a respirator, as previously described.

Number of respondents. For proposed § 60.14, MSHA assumes that 33 percent of mine operators would have their miners use respiratory protection as a temporary measure and keep records of their miners' ability to wear respirators. The number of respondents would be, on average, 603 mines per year, with each mine assumed to have at least some miners wearing respirators.

Annual number of responses. The estimated annual number of responses would be 1,205, with an average of two miners for each of the 603 mines.

Estimated annual burden. The estimated annual burden would be 603 hours. MSHA assumes it takes 30 minutes to record this information for about two miners for each of the 603 mines.

Proposed § 60.15—Medical Surveillance for Mental and Nonmetal Miners

ICR. Proposed § 60.15 would require MNM mine operators to obtain a written medical opinion from a PLHCP or specialist regarding any recommended limitations on a miner's use of respirators, as previously described.

Number of respondents. MSHA assumes that 75 percent of eligible MNM miners (current MNM miners), including contract workers, would make use of the opportunity to receive a voluntary medical exam that is paid by their mine operator. As a result, an average of 25,175 current miners are estimated to receive voluntary medical exams per year. This estimate represents the upper range of the participation rate of voluntary medical exams by miners. MSHA is using the upper end of the range to avoid underestimating compliance costs.

MSHA further estimates that 8,392 miners in a given year, including contract workers, would be new miners and contractors who would undergo mandatory medical examinations.

MSHA estimated that the turnover of MNM miners would be 8,392 miners per year (1/22 of the estimated total of 184,615 MNM workers with an average number of 22 years on the job before leaving the mining industry). The estimated total respondents per year therefore would be 33,567 (= 8,392 + 25,175).

Annual number of responses. The estimated annual number of responses would be 33,567, including 8,392 new miners and 25,175 current miners.

Estimated annual burden. The estimated annual burden would be 8,392 hours, including 2,098 hours for new MNM miners and 6,294 hours for current miners. MSHA estimates it takes 15 minutes to record the medical examination results for each of the 33,567 miners.

Total Recordkeeping and Documentation Burden for Proposed Part 60

Table XI-1. Estimated Average Annual Recordkeeping and Documentation Burden for Part 60

Proposed Provision	Annual Number of Respondents	Annual Number of Responses	Estimated Annual Burden (Hours)
§ 60.12 – Exposure Monitoring	12,631	142,408	31,392
§ 60.13 – Corrective Action	3,411	14,922	1,054
§ 60.14 – Miners unable to wear respirators	603	1,205	603
§ 60.15 – Medical surveillance for MNM miners	33,567	33,567	8,392
Annual Recordkeeping Total	46,198	192,102	41,440

As shown in Table XI–1, the total number of respondents is 46,198: 12,631 mines plus 33,567 miners; the estimated annual number of responses would be 192,102; and the estimated annual burden would be 41,440 hours. These estimates are based on the conservative assumption that 75 percent of eligible current miners would take part in medical surveillance, which could overestimate the recordkeeping cost and burden. The following estimates of information collection burden are summarized in Table XI–2.

1. *Affected Public:* Businesses or For-Profit.

2. *Estimated Number of Respondents:* 47,456 respondents in the first year; 46,198 respondents in the second year; and 44,939 respondents in the third year.

3. *Frequency:* On Occasion.

4. *Estimated Number of Responses:* 192,990 responses in the first year; 197,021 responses in the second year; and 186,294 responses in the third year.

5. *Estimated Number of Burden Hours:* 44,678 hours in the first year; 41,162 hours in the second year; and 38,480 hours in the third year.

6. *Estimated Hour Burden Costs:* $2,843,901 in the first year; $2,558,724 in the second year; and $2,377,996 in the third year.

7. *Estimated Capital Costs to Respondents:* $25,262 in each of the three years.

Table XI-2. Summary of Information Collection Burden for Proposed Part 60

	Year 1	Year 2	Year 3	Annual Average
Number of Respondents	47,456	46,198	44,939	46,198
Number of Responses	192,990	197,021	186,294	192,102
Number of Burden Hours (Rounded)	44,678	41,162	38,480	41,440
Hour Burden Costs (Rounded)	$2,843,901	$2,558,724	$2,377,996	$2,593,541
Capital Costs to Respondents	$25,262	$25,262	$25,262	$25,262

Most of the reduction in the number of responses and burden hours from the first year to the second year is a result of baseline sampling being carried out in all current mines in the first year

while only being carried out in new mines starting from the second year.

For a detailed summary of the burden hours and related costs by provision, see the Preliminary Regulatory Impact Analysis (PRIA) accompanying the proposed rule. The PRIA includes the estimated costs and assumptions for the paperwork requirements related to this proposed rule.

C. Changes to Existing Information Collection Requirements

I. *Type of review:* Non-substantive change to currently approved information collection.

OMB Control Number: 1219–0011.

1. *Title:* Respirable Coal Mine Dust Sampling.

2. *Description of the ICR:*

Background

In October 2022, MSHA received OMB approval for the reauthorization of the Respirable Coal Mine Dust Sampling under OMB Control Number 1219–0011. This information collection request outlines the legal authority, procedures, burden, and costs associated with recordkeeping and reporting requirements for coal mine operators. MSHA's standards require that coal mine operators sample respirable coal mine dust quarterly and make records of such samples.

Summary of Changes

This non-substantive change request is to revise the supporting statement for this information collection request due to the proposed PEL for respirable crystalline silica for all miners in this proposed rule. These proposed revisions would remove any reference in the information collection request to quartz or the reduction of the respirable dust standard due to the presence of quartz. This change does not modify the authority, affected mine operators, or paperwork burden.

3. *Summary of the Collection of Information:*

Changes in Burden

The calculated burden including respondents and responses remain the same.

Affected Public: Businesses or For-Profit.

Estimated Number of Respondents: 676 (0 from this rulemaking).

Frequency: On occasion.

Estimated Number of Responses: 995,102 (0 from this rulemaking).

Estimated Number of Burden Hours: 58,259 (0 from this rulemaking).

Estimated Hour Burden Costs: $3,271,611 ($0 from this rulemaking).

Estimated Capital Costs to Respondents: $29,835 ($0 from this rulemaking).

II. *Type of Review:* Discontinued information collection request.

OMB Control Number: 1219–0048.

1. *Title:* Respirator Program Records.

2. *Description of the ICR:*

Background

Title 30 CFR parts 56 and 57 incorporate by reference requirements of ANSI Z88.2–1969, ''*Practices for Respiratory Protection.*'' Under this standard, certain records are required to be kept in connection with respirators. The proposed rule would incorporate by reference ASTM F3387–19, ''*Standard Practice for Respiratory Protection,*'' in 30 CFR parts 56 and 57 to replace the Agency's existing respiratory protection standard. The proposal would require mine operators' respiratory protection plans to include certain minimally acceptable program elements, but beyond that, would permit mine operators to select the requirements of ASTM F3387–19 that are applicable to their mines.

Summary of Changes

The proposed rule would remove the paperwork burden associated with respiratory protection in the information collection request.

3. *Summary of the Collection of Information:*

Changes in Burden

MSHA has submitted a request to discontinue OMB Control Number 1219–0048, eliminating all paperwork burden associated with the information collection request. It would discontinue upon the effective date of the final rule.

Affected Public: Businesses or For-Profit.

Estimated Number of Respondents: 0 (−350 from this rulemaking).

Frequency: On occasion.

Estimated Number of Responses: 0 (−630 from this rulemaking).

Estimated Number of Burden Hours: 0 (−3,588 from this rulemaking).

Estimated Hour Burden Costs: $0 (−$284,084 from this rulemaking).

Estimated Capital Costs to Respondents: $0 (−$140,000 from this rulemaking).

D. Submitting Comments

The information collection package for this proposal has been submitted to OMB for review under 44 U.S.C. 3506(c) of the Paperwork Reduction Act of 1995, as amended. Comments on the information collection requirements should be sent to MSHA by one of the methods previously explained in the **DATES** section of this preamble.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at the Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5450. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9440 to make an appointment and determine if any special health precautions are required in keeping with the Department of Labor's COVID–19 policy.

Questions about the information collection requirements may be directed to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

E. Docket and Inquiries

Those wishing to download comments and other materials relating to paperwork determinations should use the procedures described in this preamble. One may also obtain a copy of this ICR by going to *http://www.reginfo.gov/public/do/PRAMain,* clicking on ''Currently under Review—Open for Public Comments'' and scrolling down to ''Department of Labor.''

A Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the Paperwork Reduction Act and displays a currently valid OMB control number. The public is not required to respond to a collection of information unless the collection of information displays a currently valid OMB control number.

XII. Other Regulatory Considerations

A. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), requires each Federal agency to consider the environmental effects of final actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the environment. MSHA has reviewed the proposed standard in accordance with NEPA requirements, the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, MSHA has determined that this proposed rule will

not have a significant environmental impact. Accordingly, MSHA has not conducted an environmental assessment nor provided an environmental impact statement.

B. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). The Unfunded Mandates Reform Act 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 State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year (5 U.S.C. 1532(a)). MSHA has determined that this proposed rule does not result in such an expenditure. Accordingly, the Unfunded Mandates Reform Act requires no further Agency action or analysis.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that the proposed rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children, as defined in the Act. The proposed rule impacts the mine industry and does not impose requirements on states or families. Accordingly, MSHA certifies that this proposed rule will not impact family well-being, as defined in the Act.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

Section 5 of E.O. 12630 requires Federal agencies to ''identify the takings implications of proposed regulatory actions . . .'' MSHA has determined that the proposed rule does not implement a taking of private property or otherwise have takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

E. Executive Order 12988: Civil Justice Reform

The proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities so as to minimize litigation and avoid undue burden on the Federal court system. Accordingly, the proposed rule meets the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

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

E.O. 13045 requires Federal agencies submitting covered regulatory actions to OMB's Office of Information and Regulatory Affairs (OIRA) for review, pursuant to E.O. 12866, to provide OIRA with (1) an evaluation of the environmental health or safety effects that the planned regulation may have on children, and (2) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. In E.O. 13045, ''covered regulatory action'' is defined as rules that may (1) be significant under Executive Order 12866 Section 3(f)(1) (*i.e.,* a rulemaking that has an annual effect on the economy of $200 million or more or would 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), and (2) concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children. Environmental health risks and safety risks refer to risks to health or to safety that are attributable to products or substances that the child is likely to come in to contact with or ingest through air, food, water, soil, or product use or exposure.

MSHA has determined that, in accordance with E.O. 13045, while the proposed rule is considered significant under E.O. 12866 Section 3(f)(1), it does not concern an environmental health or safety risk that may have a disproportionate impact on children. MSHA's proposed rule would lower the occupational exposure limit to respirable crystalline silica for all miners, take other actions to protect miners from adverse health risks associated with exposure to respirable crystalline silica, and require updated respiratory standards to better protect miners from all airborne hazards.

MSHA is aware of studies which have characterized and assessed the risks posed by ''take-home'' exposure pathways for hazardous dust particles. However, the proposed rule's primary reliance on engineering and administrative controls to protect miners from respirable crystalline silica exposures helps minimize risks associated with ''take-home'' exposures by reducing or eliminating silica that is in the mine atmosphere or the miner's personal breathing zone. The risks of take-home exposures are further minimized by MSHA's existing standards, operators' policies and procedures, and operators' use of clothing cleaning systems.

MSHA's existing standards limit miners' exposures to respirable crystalline silica. MSHA also requires coal mine operators to provide miners bathing facilities and change rooms. Miners have access to these facilities to shower and change their work clothes at the end of each shift. In addition, some mine operators provide miners with clean company clothing for each shift, have policies and procedures for cleaning or disposing of contaminated clothing, and provide a boot wash for miners to clean work boots during and after each shift. Moreover, some operators use clothing cleaning systems that can remove dust from a miner's clothing. Many of these systems include NIOSH-designed dust removal booths that use compressed air to remove dust, which is then vacuumed through a filter to remove airborne contaminants. Overall, the Agency's standards, mine operators' policies and procedures, and other safety practices including the use of clothing cleaning systems help to reduce or eliminate the amount of take-home exposure, therefore protecting other persons in a miner's household or persons who come in to contact with the miner outside of the mine site.

MSHA identified one epidemiological study (Onyije et al., 2022) that suggests a possible association between paternal exposure to respirable crystalline silica and childhood leukemia. However, this study does not provide dose-response data which would be needed to establish the dose of respirable crystalline silica which results in a no-adverse-effect-level (NOAEL) for childhood leukemia. This potential association has not been independently confirmed by another study. MSHA invites comment on the identification of any other scientific or academic study or information that evaluates the potential association between paternal exposure to respirable crystalline silica and childhood leukemia during the NPRM's public comment period.

MSHA also invites comment on the identification of any scientific or academic study or information that evaluates the potential risks to female workers who are exposed to respirable crystalline silica during pregnancy.

MSHA has no evidence that the environmental health or safety risks posed by respirable crystalline silica,

including ''take-home'' exposure to respirable crystalline silica, disproportionately affect children. Therefore, MSHA preliminarily concludes no further analysis or action is needed, in accordance with E.O. 13045.

G. Executive Order 13132: Federalism

MSHA has determined that the proposed rule does not have ''federalism implications'' because 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.'' Accordingly, under E.O. 13132, no further Agency action or analysis is required.

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

MSHA has determined the proposed rule does not have ''tribal implications'' because it will not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Accordingly, under E.O. 13175, no further Agency action or analysis is required.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to publish a Statement of Energy Effects for ''significant energy actions,'' which are agency actions that are ''likely to have a significant adverse effect on the supply, distribution, or use of energy'' including a ''shortfall in supply, price increases, and increased use of foreign supplies.'' MSHA has reviewed the proposal for its impact on the supply, distribution, and use of energy because it applies to the mining industry. The proposed rule would result in annualized compliance costs of $4.85 million using a 3 percent real discount rate and $4.97 million using a 7 percent real discount rate for the coal mine industry relative to annual revenue of $27.03 billion. The proposal would also result in annualized compliance costs of $54.23 million using a 3 percent real discount rate and $55.72 million using a 7 percent real discount rate for the metal/nonmetal mine industry relative to annual revenue of $88.32 billion. Because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy'' including a ''shortfall in supply, price increases, and increased use of foreign supplies,'' it is not a ''significant energy action.'' Accordingly, E.O. 13211 requires no further agency action or analysis.

J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA's analysis is presented in Section X. Initial Regulatory Flexibility Analysis.

K. Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

E.O. 13985 provides ''that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' E.O. 13985 defines ''equity'' as ''consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.'' To assess the impact of the proposed rule on equity, MSHA considered two factors: (1) the racial/ethnic distribution in mining in NAICS 212 (which does not include oil and gas extraction) compared to the racial/ethnic distribution of the U.S. workforce (Table XII–1), and (2) the extent to which mining may be concentrated within general mining communities (Table XII–2).

In 2008, NIOSH conducted a survey of mines, which entailed sending a survey packet to 2,321 mining operations to collect a wide range of information, including demographic information on miners. NIOSH's 2012 report, entitled ''National Survey of the Mining Population: Part I: Employees'' reported the findings of this survey (NIOSH 2012a). Race and ethnicity information about U.S. mine workers is presented in Table XII–1. Of all mine workers, including miners as well as administrative employees at mines, 93.4 percent of mine workers were white, compared to 80.6 percent of all U.S workers.[71] There were larger percentages of American Indian or Alaska Native and Native Hawaiian or Other Pacific Islander people in the mining industry compared to all U.S. workers, while there were smaller percentages of Asian, Black or African American, and Hispanic/Latino people in the mining industry compared to all U.S. workers.

Table XII–2 shows that there are 22 mining communities, defined as counties where at least 2 percent of the population is working in the mining industry.[72] Although the total population in this table represents only 0.15 percent of the U.S. population, it represents 12.0 percent of all mine workers. The average per capita income in these communities in 2020, $47,977,[73] was lower than the U.S. average, $59,510, representing 80.6 percent of the U.S. average. However, each county's average per capita income varies substantially, ranging from 56.4 percent of the U.S. average to 146.8 percent.

The proposed rule would lower exposure to respirable crystalline silica and improve respiratory protection for all mine workers. MSHA determined that the proposed rule is consistent with the goals of E.O. 13985 and would support the advancement of equity for all workers at mines, including those who are historically underserved and marginalized.

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[71] National data on workers by race were not available for the year 2008; comparable data for 2012 are provided for comparison under the assumption that there would not be major differences in distributions between these two years.

[72] Although 2 percent may appear to be a small number for identifying a mining community, one might consider that if the average household with one parent working as a miner has five members in total, then approximately 10 percent of households in the area would be directly associated with mining. While 10 percent may also appear small, this refers to the county. There are likely particular areas that have a heavier concentration of mining households.

[73] This is a simple average rather than a weighted average by population.

Table XII-1: Racial and Ethnic Distribution of Mine Workers* (2012)

	Number of Workers in Mining (except oil and gas) (NAICS 212)	As a Percent of Total Mine Workers Who Self-Identified in These Categories (Latest Data for 2008)	Percent of All Workers in the United States for Comparison (Latest Data 2012)****
Ethnicity			
Hispanic/Latino	26,622	12.1	15.0
Non-Hispanic or Latino	192,839	87.9	85.0
Total	**219,461**	**100.0**	**100.0**
Race**			
American Indian or Alaska Native***	4,050	1.9	0.8
Asian	183	0.1	5.4
Black or African American	8,893	4.3	13.0
Native Hawaiian or Other Pacific Islander	634	0.3	0.2
White	194,016	93.4	80.6
Total	**207,776**	**100.0**	**100.0**

*Mine workers includes miners and other workers at mines such as administrative employees.

**Does not include mine workers who did not self-report in one of these categories. Some of the surveyed mine workers may not have self-reported in one of these categories if they are affiliated with more than one race, or if they chose not to respond to this survey question.

***Includes mine workers who self-identified as an American Indian or Alaskan Native as a single race, not in combination with any other races. No other data on mine workers in this racial group were available from this source. In other employment statistics often reported on American Indians and Alaska Natives, their population is based on self-reporting as being American Indian or Alaska Native in combination with any other race, which has resulted in the reporting of much higher employment levels. See BLS, *Monthly Labor Review*, "Alternative Measurements of Indian Country: Understanding Their Implications for Economic, Statistical, and Policy Analysis," https://www.bls.gov/opub/mlr/2021/article/alternative-measurements-of-indian-country.htm.

**** More recent data from the 2020 Decennial Census were not available in September 2022.

Sources: National Institute for Occupational Safety and Health (NIOSH). 2012a. National Survey of the Mining Population Mining Publication: Part 1: Employees, DHHS (NIOSH) Pub. No. 2012-152, June 2012; U.S. Census Bureau, 2012 American Community Survey (ACS).

Table XII-2. Mining Counties: Counties in the United States with Relatively High Concentrations of Mine Workers (At Least 2 Percent of the County Population)

#	County	Number of Mine Workers (First Quarter 2022)	Population of County (Latest Data in 2021)	Estimated Percent of Population Who Are Mine Workers
1	White Pine County, Nevada	1,288	9,182	14.0
2	Pershing County, Nevada	771	6,741	11.4
3	Humboldt County, Nevada	1,549	17,648	8.8
4	Campbell County, Wyoming	3,547	46,401	7.6
5	Winkler County, Texas	513	7,415	6.9
6	Mercer County, North Dakota	555	8,323	6.7
7	Chase County, Kansas	166	2,598	6.4
8	Shoshone County, Idaho	723	13,612	5.3
9	Logan County, West Virginia	1,643	31,909	5.1
10	Sweetwater County, Wyoming	2,050	41,614	4.9
11	Glasscock County, Texas	56	1,149	4.9
12	Livingston County, Kentucky	431	8,959	4.8
13	Buchanan County, Virginia	946	19,816	4.8
14	McDowell County, West Virginia	660	18,363	3.6
15	Big Horn County, Wyoming	413	11,632	3.6
16	Sevier County, Utah	601	21,906	2.7
17	Boone County, West Virginia	582	21,312	2.7
18	Moffat County, Colorado	349	13,185	2.6
19	Nye County, Nevada	1,062	43,946	2.4
20	Raleigh County, West Virginia	1,647	73,771	2.2
21	Wyoming County, West Virginia	456	21,051	2.2
22	Elko County, Nevada	1,090	53,915	2.0
	Total	**20,963**	**494,448**	**4.2**
	All U.S. Counties	174,387	331,893,745	
	Mine Workers in Mining Counties as a Percent of All U.S. Mine Workers	12.0%		
	Population of Mine Counties as a Percent of U.S. Population		0.15%	

Source: Bureau of Labor Statistics (BLS), Quarterly Employment and Wages First Quarter 2022 (2022); Bureau of Economic Analysis, Personal Income by County, Metro, and Other Areas 2020 (2020); U.S. Census Bureau, "Annual Estimates of the Resident Population for Counties: April 1, 2020 to July 1, 2021 (CO-EST2021-POP)." *Census.gov.* Accessed DATE. Available at: *https://www.census.gov/data/tables/time-series/demo/popest/2020s-counties-total.html*; U.S. Census Bureau, Quick Facts, available at: https://www.census.gov/quickfacts/fact/table/US/PST045221 (accessed DATE).

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L. Availability of Materials To Be Incorporated by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 5 U.S.C. 552(a); 1 CFR part 51. These regulations require that information that is incorporated by reference in a rule be ''reasonably available'' to the public. They also require discussion in the preamble to the rule of the ways in which materials it proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, MSHA provides in the following: (a) summaries of the materials to be incorporated by reference and (b) information on the public availability of the materials and on how interested parties can access the materials during the comment period and upon finalization of the rule.

ASTM F3387–19, ''Standard Practice for Respiratory Protection'' (ASTM F3387–19) ASTM F3387–19 is a voluntary consensus standard that represents up-to-date advancements in respiratory protection technologies, practices, and techniques. The standard includes provisions for selection, fitting, use, and care of respirators designed to remove airborne contaminants from the air using filters, cartridges, or canisters, as well as respirators that protect miners in oxygen-deficient or immediately dangerous to life or health atmospheres. These provisions are based on NIOSH's long-standing experience of testing and approving respirators for occupational use and OSHA's research and rulemaking on respiratory protection. The proposed rule would incorporate by reference ASTM F3387–19 in existing §§ 56.5005, 57.5005, and 72.710 and in proposed § 60.14(c)(2) to better protect all miners from airborne hazards. MSHA believes that incorporating by reference ASTM F3387–19 would provide mine operators with up-to-date requirements for respirator technology, reflecting an improved understanding of effective respiratory protection and therefore better protecting the health and safety of miners. For further details on MSHA's proposed update to the Agency's existing respiratory protection standard, please see section VII.C of this preamble, Updating MSHA Respiratory Protection Standards by Incorporating by Reference ASTM F3387–19.

A paper copy or printable version of ASTM F3387–19 may be purchased by mine operators or any member of the public at any time from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; *https://www.astm.org/.* ASTM International makes read-only versions of its standards that have been referenced or incorporated into Federal regulation or laws available free of charge at its online Reading Room, *https://www.astm.org/products-services/reading-room.html.* During the comment period, a read-only version of ASTM F3387–19 will be made available free of charge.[74]

In addition, during the comment period and upon finalization of this rule, ASTM F3387–19 will be available for review free of charge at MSHA headquarters at 201 12th Street South, Arlington, VA 22202–5450 (202–693–9440).

ISO 7708:1995: Air Quality—Particle Size Fraction Definitions for Health-Related Sampling.

ISO 7708:1995 is an international consensus standard that defines sampling conventions for particle size fractions used in assessing possible health effects of airborne particles in the workplace and ambient environment. It defines conventions for the inhalable, thoracic, and respirable fractions. The proposed rule would incorporate by reference ISO 7708:1995 in proposed § 60.12(f)(4) to ensure consistent sampling collection by mine operators through the utilization of samplers conforming to ISO 7708:1995.

A paper copy or printable version of ISO 7708:1995 may be purchased by mine operators or any member of the public at any time from ISO, CP 56, CH–1211 Geneva 20, Switzerland; phone: + 41 22 749 01 11; fax: + 41 22 733 34 30; website: *www.iso.org/.* ISO makes read-only versions of its standards that have been incorporated by reference in the CFR available free of charge at its online Incorporation by Reference Portal, *http://ibr.ansi.org/Default.aspx.*

In addition, during the comment period and upon finalization of this rule, ISO 7708:1995 will be available for review free of charge at MSHA headquarters at 201 12th Street South, Arlington, VA 22202–5450, (202–693–9440).

TLV's Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973.

This material is referenced in the amendatory text of this document but has already been approved for appendix A. No changes are proposed.

[74] The read-only version of ASTM F3387–19 available for public review during the comment period can be accessed using the following link—*https://tinyurl.com/mwk97hjn.*

XIII. References Cited in the Preamble

Abraham, J.L. and Wiesenfeld, S.L. 1997. Two cases of fatal PMF in an ongoing epidemic of accelerated silicosis in oilfield sandblasters: Lung pathology and mineralogy. Annals of Occupational. Hygiene, Vol. 41, Supplement 1, pp. 440–447, 1997.

Agency for Toxic Substances and Disease Registry (ATSDR). 2019. Toxicological profile for silica. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Division of Toxicology and Human Health Sciences, Atlanta, GA.

Almberg, K.S., Friedman, L.S., Rose, C.S., Go, L.H.T., Cohen, R.A. 2020. Progression of coal workers' pneumoconiosis absent further exposure. Occupational and Environmental Medicine. 77:748–751.

Almberg, K.S., Halldin, C.N., Blackley, D.J., Laney, A.S., Storey, E., Rose, C.S., Go, L.H.T. and Cohen, R.A. 2018a. Progressive massive fibrosis resurgence identified in U.S. coal miners filing for black lung benefits, 1970–2016. Annals of American Thoracic Society. 15(12): 1420–1426.

Am. Fuel & Petrochemical Manufacturers v. Env't Prot. Agency, 3 F.4th 373, 384 (D.C. Cir. 2021).

American Conference of Governmental Industrial Hygienists (ACGIH) 2022. TLV chemical substances introduction. *https://www.acgih.org/science/tlv-bei-guidelines/tlv-chemical-substances-introduction/.*

American Conference of Governmental Industrial Hygienists (ACGIH). 2010: Silica, crystalline: α-Quartz and cristobalite. Documentation of TLV Recommendation. Cincinnati, Ohio.

American Conference of Governmental Industrial Hygienists (ACGIH). TLVs® Threshold limit values for chemical substances in workroom air adopted by the American Conference of Government Industrial Hygienists for 1973. Journal of Occupational Medicine. 1974; 16(1):39–49 PMID: 4814108.

American Iron and Steel Institute et al., v. Occupational Safety and Health Administration, 577 F.2d 825 (3d Cir. 1978).

American Society of Testing and Materials (ASTM). 2019. Standard practice for respiratory protection. F3387–19. West Conshohocken, PA.

American Thoracic Society (ATS). 2010a. Breathing in America: Diseases, progress, and hope. Ed: D.E. Schraufnagel. American Thoracic Society. 282 pages.

American Thoracic Society (ATS). 2010b. An official American Thoracic Society public policy statement: Novel risk factors and the global burden of chronic obstructive pulmonary disease. By: Eisner M.D., Anthonisen, N., Coultas, D., Kuenzli, N., Perez-Padilla, R., Postma, D., Romieu, I., Silverman, E.K., and Balmes, J.R. American Journal of Respiratory and Critical Care Medicine. 182:693–718.

American Thoracic Society (ATS). 1997. Adverse effects of crystalline silica exposure. Committee members Beckett W., Abraham, J., Becklake M., et al. American Journal of Respiratory Critical Care Medicine. 155:761–768.

Antão, V.C., Petsonk, E.L., Sokolow, L.Z., Wolfe, A.L., Pinheiro, G.A., Attfield, M.D., 2005. Rapidly progressive coal workers' pneumoconiosis in the United States: geographic clustering and other factors. Occup Environ Med. 62(10):670–4.

Attfield, M. and Costello, J. 2004. Quantitative exposure-response for silica dust and lung cancer in Vermont granite workers. American Journal of Industrial Medicine. 45:129–138.

Attfield, M.D. and Kuempel, E.D. 2008. Mortality among U.S. underground coal miners, a 23- year follow-up. American Journal of Industrial Medicine. 51(4):231–245.

Attfield, M.D., Vallyathan, V., and Green, F.H.Y. 1994. Radiographic appearances of small opacities and their correlation with pathology grading of macules, nodules and dust burden in the lungs. Annals of Occupational Hygiene. 38(Suppl. 1):783–789.

Balaan, M.R. and Banks, D.E. 1998. Silicosis. In: Rom W.N., ed. Environmental and Occupational Medicine, Third Edition. 435–448.

Banks, D.E. 2005. Silicosis. In: Rosenstock L., M.R. Cullen, C.A. Brodkin, and C.A. Redlich, eds. Textbook of Clinical Occupational and Environmental Medicine. 2nd ed. Philadelphia, PA. Elsevier Saunders. Pages 380–392.

Barnes, H., Goh, N.L., Leong, T.L., and Hoy, R. 2019. Silica-associated lung disease: An old- world exposure in modern industries. Respirology. 24, 1165–1175.

Becklake, MR. 1994. Pneumoconioses. In: Murray J.F. and J.A. Nadel, eds. Textbook of Respiratory Medicine. Second edition. Philadelphia, PA. W.B. Saunders Co. Pages 1955–2001.

Becklake, M.R., Irwig, L., Kielowski, D., Webster, I., DeBeer, M., and Landau, S. 1987. The predictors of emphysema in South African gold miners. American Review of Respiratory Disease. 135:1234–1241.

Bégin, R., Filion, R., and Ostiguy, G. 1995. Emphysema in silica- and asbestos-exposed workers seeking compensation. A CT scan study. Chest 108:647–655.

Bégin, R., Bergeron, D., Samson, L., Boctor, M., Cantin, A. 1987. CT assessment of silicosis in exposed workers. American Journal of Roentgenology. 148(3):509–14. doi: 10.2214/ajr.148.3.509. PMID: 3492877.

Benmerzoug, S., Rose, S., Bounab, B., Gosset, D., Duneau, L., Chenuet, P., Mollet, L., Le Bert, M., Lambers, C., Geleff, S., Roth, M., Fauconnier, L., Sedda, D., Carvalho, C., Perche, O., Laurenceau, D., Ryffel, B., Apetoh, L., Kiziltunc, A., Uslu1, H., Albez, FS., Akgun, M., Togbe, D., Quesniaux, VFJ. 2018. STING-dependent sensing of self-DNA drives silica-induced lung inflammation. Nature Communications. 9:5226. DOI: *https://doi.org/10.1038/s41467-018-07425-1.*

Blackley, D., Reynolds, L., Short, C., Carson, R., Storey, E., Halldin, C.N. and Laney, A.S. 2018b. Research letter: Progressive massive fibrosis in coal miners from 3 clinics in Virginia. Journal of the American Medical Association.

Blackley, D., Halldin, C., Cohen, R., Cummings, K., Storey, E., Laney, S. 2017. Misclassification of occupational disease in lung transplant recipients. J Heart Lung Transplant. 36(5):588–590.

Blackley, D., Halldin, C., and Laney, A. 2016b. Resurgence of progressive massive fibrosis in coal miners—Eastern Kentucky, 2016. Morbidity and Mortality Weekly Report. 65(49):1385–9.

Blackley, D.J., Laney, A.S., Halldin, C.N., Cohen R.A. 2015. Profusion of opacities in simple coal workers pneumoconiosis is associated with reduced lung function. Official Publication of the American Chest Physicians. 148(5):1293–1299.

Borm, P.J.A. and Driscoll, K. 1996. Particles, inflammation and respiratory tract carcinogenesis. Toxicology Letters 88:109–113.

Brief and Scala, 1986. Occupational health aspects of unusual work schedules: A review of Exxon's experiences. Am. Ind. Hyg. Assoc. J. 47 (4): 199–202.

Brown, T. 2009. Silica exposure, smoking, silicosis and lung cancer—complex interactions. Occupational Medicine. 59:89–95.

Brown, G.M., and Donaldson, K. 1996. Modulation of quartz toxicity by aluminum. In: Castranova V, V. Vallyathan, and W.E. Wallace, eds. Silica and Silica-Induced Lung Diseases. Boca Raton, FL: CRC Press, Inc. Pages 299–304.

Buchanan, D., Miller, B.G., and Soutar, C.A.. 2003. Quantitative relations between exposure to respirable quartz and risk of silicosis. Occupational and Environmental Medicine. 60:159–164.

Bureau of Labor Statistics (BLS), Quarterly Employment and Wages First Quarter 2022 (2022); Bureau of Economic Analysis, Personal Income by County, Metro, and Other Areas 2020 (2020); U.S. Census Bureau, ''Annual Estimates of the Resident Population for Counties: April 1, 2020 to July 1, 2021 (CO–EST2021–POP)''

Calvert, G., Rice, F. L., Boiano, J. M., Sheehy, J. W., Sanderson, W. T.. 2003. Occupational silica exposure and risk of various diseases: an analysis using death certificates from 27 states of the United States. Occupational and Environmental Medicine. 60:122–129.

Calvert, G.M., Steenland, K., and Palu, S. 1997. End-stage renal disease among silica-exposed gold miners: A new method for assessing incidence among epidemiologic cohorts. Journal of the American Medical Association. 277:1219–1223.

Carneiro, A.P., Barreto, S.M., Siqueira, A.L., Cavariani, F., and Forastiere, F. 2006a. Continued exposure to silica after diagnosis of silicosis in Brazilian gold miners. American Journal of Industrial Medicine. 49:811–818.

Carta, P., Aru, G., and Manca, P. 2001. Mortality from lung cancer among silicotic patients in Sardinia: An update study with 10 more years of follow up. Occupational and Environmental Medicine. 58:786–793.

Cassidy, A., Mannetje, A., Van Tongeren, M., Field, J.K., Zaridze, D., Szeszenia-Dabrowska, N., Rudnai, P., Lissowska, J., Fabianova, E., Mates, D., Bencko, V., Foretova, L., Janout, V., Fevotte, J., Fletcher, T., Brennan, P., and Boffetta, P. 2007. Occupational exposure to crystalline silica and risk of lung cancer: A multicenter case-control study in Europe. Epidemiology. 18:36–43.

Castranova V. 2004. Signaling pathways controlling the production of inflammatory mediators in response to crystalline silica exposure: Role of reactive oxygen/nitrogen species. Free Radical Biology and Medicine. 37:916–925.

Castranova, V. and Vallyathan, V.. 2000. Silicosis and coal workers' pneumoconiosis. Environmental Health Perspectives. 108(suppl 4):675–684.

Castranova, V., Pailes, W.H., Dalal, N.S., Miles, P.R., Bowman, L., Vallyathan, V., Pack, D., Weber, K.C., Hubbs, A., Schwegler-Berry, D., Xiang, J., Dey, K., Blackford, J., Ma, J.Y.C., Barger, M., Shoemaker, D.A., Pretty, J.R., Ramsey, D.M., McLaurin, J.L., Khan, A., Baron, P.A., Childress, C.P., Stettler, L.E., and Teass, A. 1996. Enhanced pulmonary response to the inhalation of freshly fractured silica as compared with aged dust exposure. Applied Occupational and Environmental Hygiene. 11(7):937–941.

Cecala A.B., Organiscak, J.A., Noll, J.D. and Zimmer, J.A. Comparison of MERV 16 and HEPA filters for cab filtration of underground mining equipment. Min Eng. August 2016; 68(8): 50–58. doi:10.19150/me.6712.

Centers for Disease Control and Prevention (CDC). 2001. Comparability of cause of death between ICD–9 and ICD–10: Preliminary Estimates. By Robert N. Anderson, Ph.D.; Arialdi M. Miniño, M.P.H.; Donna L. Hoyert, Ph.D.; and Harry M. Rosenberg, Ph.D. National Vital Statistics Reports. 49(2): 1–32.

Checkoway H., Hughes, J.M., Weill, H., Seixas, N.S., and Demers P.A. 1999. Crystalline silica exposure, radiological silicosis, and lung cancer mortality in diatomaceous earth industry workers. Thorax. 54:56–59.

Checkoway, H., Heyer, N.J., Seixas, N.S., Welp, E.A.E., Demers, P.A., Hughes, J.M., and Weill, H. 1997. Dose-response associations of silica with nonmalignant respiratory disease and lung cancer mortality in the diatomaceous earth industry. American Journal of Epidemiology. 145(8):680–688.

Checkoway H., Heyer, N.J., Demers, P.A., and Gibbs, G.W. 1996. Reanalysis of mortality from lung cancer among diatomaceous earth industry workers, with consideration of potential confounding by asbestos exposure. Occupational and Environmental Medicine. 53:645–647.

Checkoway H., Heyer, N.J., Demers, P.A., and Breslow, NE 1993. Mortality among

workers in the diatomaceous earth industry. British Journal of Industrial Medicine. 50:586–597.

Chen, W. and Chen, J. 2002. Nested case-control study of lung cancer in four Chinese tin mines. Occupational and Environmental Medicine.

Chen, W., Liu, Y., Wang, H., Hnizdo, E., Sun, Y., Su, l., Zhang, X., Weng, S., Bochmann, F., Hearl, F.J., Chen, J., and Wu, T. 2012. Long-term exposure to silica dust and risk of total and cause-specific mortality in Chinese workers: A cohort study. PLoS Medicine. 9(4):1–11.

Chen, W., Yang, J., Chen, J., and Bruch, J. 2006. Exposure to silica mixed dust and cohort mortality study in tin mines: exposure-response analysis and risk assessment of lung cancer. American Journal of Industrial Medicine. 49(2):67–76.

Chen, W., Hnizdo, E., Chen, J–Q., Attfield, M.D., Gao, P., Hearl, F., Lu, J., and Wallace, W.E. 2005. Risk of silicosis in cohorts of Chinese tin and tungsten miners, and pottery workers (I): An epidemiological study. American Journal of Industrial Medicine. 48(1):1–9.

Chen, W., Zhuang, Z., Attfield, M.D., Chen, B.T., Gao, P., Harrison, J.C., Fu, C., Chen, J–Q, and Wallace, W.E. 2001. Exposure to silica and silicosis among tin miners in China: exposure-response analyses and risk assessment. Occupational and Environmental Medicine. 58:31–37

Chen J., McLaughlin, J.K., Zhang, J–Y, Stone, B.J., Luo, J., Chen, R–A, Dosemeci, M., Rexing, S.H., Wu, Z., Hearl, F.J., McCawley, M.A. and Blot, W.J. 1992. Mortality among dust-exposed Chinese mine and pottery workers. Journal of Occupational Medicine. 34:311–316.

Cherniack, M. 1986. The Hawks' Nest incident: America's worst industrial disaster. New Haven, CT: Yale University Press.

Cocco, P., Ward M.H., and Buiatti, E.. 1996. Occupational risk factors for gastric cancer: An overview. Epidemiologic Reviews. 18(2):218–234.

Cochrane, A.L., Carpenter, R.G., Clarke, W.G., Jonathan, G., Moore, F. 1956. Factors influencing the radiological progression rate of progressive massive fibrosis. British Journal of Industrial Medicine. 13(3):177–83.

Cohen, R., and Velho, V. 2002. Update on respiratory disease from coal mine and silica dust. Clinics in Chest Medicine 23:811–826.

Cohen, R.A., Rose, C.S., Go, L.H.T., Zell-Baran, L.M., Almberg, K.S., Sarver, E.A., Lowers, H.A., Iwaniuk, C., Clingerman, S.M., Richardson, D.L., Abraham, J.L., Cool, C.D., Franko, A.D., Hubbs, A.F., Murray, J., Orandle, M.S., Sanyal, S., Vorajee, N.I., Petsonk, E.L., Zulfikar R., Green, F. 2022. Pathology and mineralogy demonstrate respirable crystalline silica is a major cause of severe pneumoconiosis in US coal miners. Annals of the American Thoracic Society. 19(9):1469–1478

Cohen, R.A., Orandle, M., Hubbs, A.F., Almberg, K. S., Go, L. H., Clingerman, S., Fluharty, K., Dodd, T., Rose, C.S., Abraham, J.L., Sanyal, S., Franko, A., J. Murray, J., Vorajee, N., Zell-Baran, L., E. L. Petsonk, E.L., Zulfikar, R., and Green, F.H.Y. 2019. Pathologic Type of Progressive Massive Fibrosis in the National Coal Workers' Autopsy Study (NCWAS) 1971–1996. American Journal of Respiratory and Critical Care Medicine. 199: A2758. *https://doi.org/10.1164/ajrccm-conference.2019.199.1_MeetingAbstracts.A2758.*

Cohen, R.A., Petsonk, E.L., Rose, C., Young B., Regier M., Najmudin A., Abraham J.L., Churg A., Green, F.H.Y. 2016. Lung Pathology in U.S. Coal Workers with Rapidly Progressive Pneumoconiosis Implicates Silica and Silicates. American Journal of Respiratory and Critical Care Medicine. 190(6): 673–680.

Costello, J. and Graham, W.G. 1988. Vermont granite workers' mortality study. American Journal of Industrial Medicine. 13(4):483–97.

Costello, J., Castellan, R.M., Swecker, G.S., and Kullman, G.J. 1995. Mortality of a cohort of U.S. workers employed in the crushed stone industry, 1940–1980. American Journal of Industrial Medicine. 27(5):625–640.

Cowie, R. 1998. The influence of silicosis on deteriorating lung function in gold miners. Chest. 113:340–343.

Cowie, R.L. 1994. The epidemiology of tuberculosis in gold miners with silicosis. American Journal of Respiratory Critical Care and Medicine. 150:1460–1462.

Cowie, R.L. and Becklake, M.R.. 2016. Pneumoconioses. In: R.J. Mason & A. Slutsky & J.F. Murray & J.A. Nadel & M. Gotway & V.C. Broaddus & J.D Ernst & T.E. King, Jr. & K.F. Sarmiento, Editors. Murray and Nadel's Textbook of Respiratory Medicine. Sixth Edition. Philadelphia, PA: Elsevier Saunders. Chapter 73:1307–1330.

Cowie, R.L. and Mabena, S.K. 1991. Silicosis, chronic airflow limitation, and chronic bronchitis in South African gold miners. American Review of Respiratory Disease. 143(1):80–4.

Craighead, J.E. and Vallyathan, N.V.. 1980. Cryptic pulmonary lesions in workers occupationally exposed to dust containing silica. Journal of the American Medical Association. 244:1939–1941.

Davis, G.S. 1996. Silica. In: Harber P, M.B. Schenker, and J.R. Balmes, eds. Occupational and Environmental Respiratory Disease. 1st Ed. Mosby-Year Book, Inc. St. Louis, MO. Pages 373–399.

Davis, L.K., Wegman, D.H., Monson, R.R., and Froines, J. 1983. Mortality Experience of Vermont Granite Workers. American Journal of Industrial Medicine. 4:705–723.

Davis, J.M.G., Chapman, J., Collings, P., Douglas, A.N., Fernie, J., Lamb, D., Ottery, J., Ruckley, A. 1979. Autopsy study of coalminers' lungs. Final report on CEC Contract 6244–00/8/103. Historical Research Report, Research Report TM/79/09. Institute of Occupational Medicine. Edinburgh.

De Beer, M., Kielkowski, Yach, D., and Steinberg, M. 1992. Selection bias in a case-control study of emphysema. South African Journal of Epidemiology Infection. 7:9–13.

de Klerk, N.H. and Musk, A.W.. 1998. Silica, compensated silicosis, and lung cancer in Western Australia goldminers. Occupational and Environmental Medicine. 55:243–248.

Doney, B.C,, Blackley, D., Hale, J.M., Halldin, C., Kurth, L., Syamlal, G., Laney, A.S., Respirable coal mine dust at surface mines, United States, 1982–2017. Am J Ind Med. 2020 Mar;63(3):232–239. doi: 10.1002/ajim.23074. Epub 2019 Dec 9. PMID: 31820465; PMCID: PMC7814307.

Doney BC, Blackley D, Hale JM, Halldin C, Kurth L, Syamlal G, Laney AS. Respirable coal mine dust in underground mines, United States, 1982–2017. Am J Ind Med. 2019 Jun;62(6):478–485. doi: 10.1002/ajim.22974. Epub 2019 Apr 29. PMID: 31033017; PMCID: PMC6800046.

Dong D., Xu, G., Sun, Y., and Hu, P. 1995. Lung cancer among workers exposed to silica dust in Chinese refractory plants. Scandinavian Journal of Work, Environment & Health. 21:69–72.

Douglas, A.N., Robertson, A., Chapman, J.S., and Ruckley, V.A. 1986. Dust exposure, dust recovered from the lung, and associated pathology in a group of British coalminers. British Journal of Industrial Medicine. 43:795–801.

Dumavibhat, N., Matsui, T., Hoshino, E., Rattanasiri, S., Muntham, D., Hirota, R., Eitoku, M., Imanaka, M., Muzembo, B.A., Ngatu, N.R., Kondo, S., Hamada, N., and Suganuma, N. 2013. Radiographic Progression of Silicosis among Japanese Tunnel Workers in Kochi. Journal of Occupational Health. 55:142–148.

Elias, J., and CIH, R. 2013. Adjustments for Unusual Work Schedules. *http://eliasconsulting.info/home/wp-content/uploads/2013/06/Adjustments-for-Unusual-Work-Schedules.pdf.*

Eisen, E.A., Wegman, D.H., Louis, T.A., Smith, T.J., and Peters, J.M. 1995. Healthy worker effect in a longitudinal study of one-second forced expiratory volume (FEV1) and chronic exposure to granite dust. International Journal of Epidemiology. 24:1154–1161.

EMSL Analytical, Inc. 2022. Industrial Hygiene Lab Services Guide. Retrieved December 29, 2022, from *https://emsl.com/PDFDocuments/ServicesGuide/Industrial%20Hygiene%20Lab.%20Services%20Guide%202022.pdf.*

Erren, T.C., Glende, C.B., Morfeld, P., and Piekarski, C. 2009. Is exposure to silica associated with lung cancer in the absence of silicosis? A meta-analytical approach to an important public health question. International Archives of Occupational and Environmental Health. 2(8):997–1004.

Executive Order 12866 of September 30, 1993: Regulatory Planning and Review. 58 FR 51735. October 4, 1993. Accessed at *https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf* on January 5, 2023.

Federal Coal Mine Health and Safety Act (Coal Act). 1969. House Report No. 91–

563, October 13, 1969. Available at: *https://www.msha.gov/regulations/laws/1969-coal-act/house-report-no-91-563.*

Fernie, J.M. and Ruckley, V.A.. 1987. Coalworkers' pneumoconiosis: correlation between opacity profusion and number and type of dust lesions with special reference to opacity type. British Journal of Industrial Medicine. 44:273–277.

Finkelstein, M.M. 2000. Silica, silicosis, and lung cancer: A risk assessment. American Journal of Industrial Medicine. 38:8–18.

Finkelstein, M.M. 1998. Radiographic silicosis and lung cancer risk among workers in Ontario. American Journal of Industrial Medicine.

Finkelstein, M.M. 1995. Radiographic abnormalities and the risk of lung cancer among workers exposed to silica dust in Ontario. Canadian Medical Association Journal. 152(1):37–43.

Finkelstein, M.M. and Verma, D.K.. 2005. Mortality among Ontario members of the International Union of Bricklayers and Allied Craftworkers. American Journal of Industrial Medicine. 47:4–9.

Fubini, B., Fenoglio, I., Ceschino, R., Ghiazza, M., Martra, G., Tomatis, M., Borm, P., Schins, R., and Bruch, J. 2004. Relationship between the state of the surface of four commercial uartz flours and their biological activity in vitro and in vivo. International Journal of Hygiene and Environmental Health. 207:89–104.

Goldsmith, D.F. 1997. Does Occupational Silica Exposure or Silicosis Cause Lung Cancer? Annals of Occupational Hygiene. 41(Supplement 1):475–479.

Goodwin, S.S., Stanbury, M., Wang, L–M., Silbergeld, E., and Parker, J.E. 2003. Previously undetected silicosis in New Jersey decedents. American Journal of Industrial Medicine.

Graber, JM., Stayner, L., Cohen, R.A., et al. 2014a. The need for continued investigation of lung cancer risk in coal miners. Occupational and Environmental Medicine. 71:523–524.

Graber, J.M., Stayner, L.T., Cohen, R.A., Conroy, L.M. and Attfield, M.D. 2014b. Respiratory disease mortality among US coal miners; results after 37 years of follow-up. Journal of Occupational and Environmental Medicine. 71(1): 30–39.

Graham, W.G., Weaver, S., Ashikaga, T., and O'Grady, R.V. 1994. Longitudinal pulmonary function losses in Vermont granite workers. A reevaluation. Chest. 106:125–130.

Graham, W.G., O'Grady, R.V., and Dubuc, B. 1981. Pulmonary function loss in Vermont granite workers. A long-term follow-up and critical reappraisal. American Review of Respiratory Disease. 123:25–28.

Greaves, I.A. 2000. Not-so-simple silicosis: A case for public health action. American Journal of Industrial Medicine. 37:245–251.

Green, F.H.Y. 2019. Lessons learned from the National Coal Workers Autopsy Study (NCWAS) and opportunities for the future—PowerPoint presentation. Cummings School of Medicine, University of Calgary, Alberta, Canada. *http://www.blacklungcoe.org/wp-content/uploads/2019/05/Lessons-Learned-from-the-National-Coal-Workers-Autopsy-Study-NCWAS.pdf.*

Green, F.H.Y, Althouse, R., Parker, J., Kahn, J., Weber, K., and Vallyathan, V. 1998b. Trends in the prevalence of coal workers' pneumoconiosis in U.S. autopsied coal miners. In: Chiyotani K, Y. Hosoda, Y. Aizawa, eds. Advances in the Prevention of Occupational Respiratory Diseases: Proceedings of the 9th International Conference on Occupational Respiratory Diseases, Kyoto, Japan, 13–16, October 1997, Pages 145–148.

Green, F.H.Y. and Vallyathan, V. 1996. Pathologic responses to inhaled silica. In: Castranova V, V. Vallyathan, and W.E. Wallace, eds. Silica and Silica-Induced Lung Diseases. Boca Raton, FL: CRC Press. Pages 39–59.

Green, F.H.Y., Althouse, R., and Weber, K., 1989. Prevalence of silicosis at death in underground coal miners. American Journal of Industrial Medicine. 16:605–615.

Gregorini, G., Ferioli, A., Donato, F., Tira, P., Morassi, L., Tardanico, R., Lancini, L., and Maiorca, R. 1993. Association between silica exposure and necrotizing crescentic glomerulonephritis with p-ANCA and anti-MPO antibodies: A hospital-based case-control study. Advances in Experimental Medicine and Biology. 336:435–440.

Guénel, P., Breum, N.O. and Lynge, E. 1989a. Exposure to silica dust in the Danish stone industry. Scandinavian Journal of Work, Environment & Health. 15(2):147–153.

Guénel, P., Højberg, G. and Lynge, E.. 1989b. Cancer incidence among Danish stone workers. Scandinavian Journal of Work, Environment & Health. 15(4):265–270.

Hall, N.B., Blackley D.J., Markle T., Crum J.B., Halldin C.N., Laney A.S. 2022. Postexposure progression of pneumoconiosis among former Appalachian coal miners. American Journal of Industrial Medicine. doi: 10.1002/ajim.23431. Online ahead of print.

Hall, NB., Blackley D,J., Halldin C,N., Laney A,S 2020b. Pneumoconiosis progression patterns in US coal miner participants of a job transfer programme designed to prevent progression of disease. Occupational and Environmental Medicine. 77(6):402–406.

Halldin, C.N., Blackley, D.J., Markle, T., Cohen, R.A., Laney, A.S. 2020. Patterns of progressive massive fibrosis on modern coal miner chest radiographs. Archives of environmental and Occupational Health. 75(3):152–158.

Halldin CN., Hale JM., Weissman DN., Attfield MD., Parker JE., Petsonk EL., Cohen RA., Markle T., Blackley DJ., Wolfe AL., Tallaksen RJ., Laney AS. 2019. The National Institute for Occupational Safety B Reader Certification Program—An Update Report (1987–2018) and Future Directions. Journal of Occupational and Environmental Medicine. 61(12):1045–1051. doi:10.1097/JOM.0000000000001735.

Haustein, U.F. and Anderegg, U. 1998. Silica-induced scleroderma—clinical and experimental aspects. Journal of Rheumatology. 25:1917–1926.

Hertzberg V., Rosenman, K.D., Reilly, M.J., and Rice, C.H. 2002. Effect of occupational silica exposure on pulmonary function. Chest. 122:721–728.

Hessel, P.A., G.K. Sluis-Cremer, and Hnizdo, E. 1990. Silica Exposure, Silicosis, and Lung Cancer: A Necropsy Study. British Journal of Industrial Medicine. 47(1):4–9.

Hessel, P.A., Sluis-Cremer, G.K., Hnizdo, E., Faure, M.H., Thomas, RG., Wiles, FJ. 1988. Progression of silicosis in relation to silica dust exposure. Annals of Occupational Hygiene 32:689–696.

Hessel, P.A., Sluis-Cremer, G.K., and Hnizdo, E. 1986. Case-control study of silicosis, silica exposure, and lung cancer in white South African gold miners. American Journal of Industrial Medicine. 10:57–62.

Hnizdo, E. 1992. Loss of lung function associated with exposure to silica dust and with smoking and its relation to disability and mortality in South African gold miners. British Journal of Industrial Medicine. 49:472–479.

Hnizdo, E. 1990. Combined effect of silica dust and tobacco smoking on mortality from chronic obstructive lung disease in gold miners. British Journal of Industrial Medicine. 47:656–664.

Hnizdo, E. and Murray, J. 1998. Risk of pulmonary tuberculosis relative to silicosis and exposure to silica dust in South African gold miners. Occupational and Environmental Medicine. 55:496–502.

Hnizdo, E. and Sluis-Cremer, G.. 1993. Risk of silicosis in a cohort of white South African gold miners. American Journal of Industrial Medicine. 24:447–457.

Hnizdo and Sluis-Cremer. 1993a. Hughes, J.M., and H. Weill. 1995. Letter to the Editor: Silicosis risk: Canadian and South African miners. American Journal of Industrial Medicine 27:617–618.

Hnizdo and Sluis-Cremer. 1993b. Hnizdo E. 1995. Letter to the Editor. Risk of Silicosis: Comparison of South African and Canadian Miners. American Journal of Industrial Medicine. 27:619–622.

Hnizdo, E. and Sluis-Cremer, G.. 1991. Silica exposure, silicosis, and lung cancer: A mortality study of South African gold miners. British Journal of Industrial Medicine. 48:53–60.

Hnizdo, E. and Vallyathan, V.. 2003. Chronic obstructive pulmonary disease due to occupational exposure to silica dust: A review of epidemiological and pathological evidence. Occupational and Environmental Medicine. 60:237–243.

Hnizdo, E., Murray, J. and A. Davison. 2000. Correlation between autopsy findings for chronic obstructive airways disease and in-life disability in South African gold miners. International Archives of Occupational and Environmental Health. 73:235–244.

Hnizdo E., Murray, J. and S. Klempman. 1997. Lung cancer in relation to

exposure to silica dust, silicosis, and uranium production in South African gold miners. Thorax. 52:271–275.

Hnizdo E., Sluis-Cremer, G.K., Baskind, E., and Murray, J.1994. Emphysema and airway obstruction in non-smoking South African gold miners with long exposure to silica dust. Occupational and Environmental Medicine. 51:557–563.

Hnizdo E., Murray, J., Sluis-Cremer, G.K., and Thomas, R.G. 1993. Correlation between radiological and pathological diagnosis of silicosis: An autopsy population based study. American Journal of Industrial Medicine. 24:427–445.

Hnizdo E., Sluis-Cremer, G.K. and Abramowitz, J.A.. 1991a. Emphysema type in relation to silica dust exposure in South African gold miners. American Review of Respiratory Disease. 143:1241–1247.

Hnizdo E, Baskind, E. and Sluis-Cremer, G.K.. 1990. Combined effect of silica dust exposure and tobacco smoking on the prevalence of respiratory impairments among gold miners. Scandinavian Journal of Work, Environment & Health. 16:411–422.

Holman, C.D., Psaila-Savona, P., Roberts, M., McNulty, J.C. 1987. Determinants of chronic bronchitis and lung dysfunction in Western Australian gold miners. British Journal of Industrial Medicine. 44:810–818.

Honma, K., Abraham, J.L, Chiyotani, K., De Vuyst, P., Dumortier, P., Gibbs, A.R., Green, F.H.Y., Hosoda, Y., Iwai, K., Williams, W.J., Kohyama N., Ostiguy, G., Roggli, V.L., Shida, H., Taguchi, O., and Vallyathan, V. 2004. Proposed Criteria for Mixed-Dust Pneumoconiosis: Definition, Descriptions, and Guidelines for Pathologic Diagnosis and Clinical Correlation. Human Pathology. 35(12):1515–23.

Hotz, P., Gonzales-Lorenzo, J., Siles, E., Trujillano, G, Lauwerys, R., Bernard, A. 1995. Subclinical signs of kidney dysfunction following short exposure to silica in the absence of silicosis. Nephron. 70:438–442.

Hoy, R.F. and Chambers, DC 2020. Silica-related diseases in the modern world. Allergy. 75(11):2805–2817. doi: 10.1111/all.14202.

Hu, YB., Wu, X., Qin, ZF., Wang, L., Pan, P.H. 2017. Role of Endoplasmic Reticulum Stress in Silica-induced Apoptosis in RAW264.7 Cells. Biomedical and Environmental Science. 30(8):591–600.

Hua F., Xueqi, G., Xipeng, J., Shunzhang, Y., Kaiguo, W., and Guidotti, T.L. 1994. Lung cancer among tin miners in southeast China: Silica exposure, silicosis, and cigarette smoking. American Journal of Industrial Medicine. 26:373–381.

Hughes J.M., Weill, H., Rando, R.J., Shi, R., McDonald, A.D., McDonald, J.C. 2001. Cohort mortality study of North American industrial sand workers. II. Case-referent analysis of lung cancer and silicosis deaths. Annals of Occupational Hygiene Journal. 45:201–207.

Hughes, J.M., Jones, R.N., Gilson, J.C., Hammad, Y.Y., Sammi, B., Hendrick, D.J., Turner- Warick, M., Doll, N.J. and Weill, H. 1982. Determinants of Progression in Sandblasters' Silicosis. Annals of Occupational Hygiene. 26(1):701–712.

Humerfelt S., G.E. Eide, and A. Gulsvik. 1998. Association of years of occupational quartz exposure with spirometric airflow limitation in Norwegian men aged 30–46 years. Thorax. 53:649–655.

Hurley, F., Kenny, L., and Miller, B. 2002. Health Impact Estimates of Dust-related Disease in UK Coal Miners: Methodological and Practical Issues. Annals of Occupational Hygiene, Vol. 46, Supplement 1, pages 261–264, 2002.

Hurley, J.F., Alexander, W.P., Hazledine, D.J., Jacobsen, M., and Maclaren, W.M. 1987. Exposure to respirable coalmine dust and incidence of progressive massive fibrosis. British Journal of Industrial Medicine. 44(10):661–72.

Industrial Minerals Association—North America and Mine Safety and Health Administration. 2008. A practical Guide to an Occupational Health Program for Respirable Crystalline Silica. Instruction Guide Series IG 103. MSHA Alliance Program. Industrial Minerals Association—North America and the Mine Safety and Health Administration. Washington, DC.

International Agency for Research on Cancer (IARC). 2012. Silica Dust, Crystalline, In The Form Of Quartz Or Cristobalite. Monographs on the evaluation of carcinogenic risks to humans: Arsenic, Metals, Fibres, and Dusts-A Review of Human Carcinogens. International Agency for Research on Cancer, World Health Organization. Geneva, Switzerland. 100C:355–406.

International Agency for Research on Cancer (IARC). 1997. Monographs on the evaluation of carcinogenic risks to humans: Silica, some silicates, coal dust and para-aramid fibrils. International Agency for Research on Cancer, World Health Organization. Geneva, Switzerland. 68:41–242, and 68: 337–406.

International Labour Organization. (2022). Guidelines for the use of the ILO classification of radiographs of pneumoconioses. Revised edition 2022. International Labour Organization, Geneva, Switzerland. 45 pages.

International Labour Organization (ILO). 2011. Guidelines for the use of the ILO international classification of radiographs of pneumoconioses. Revised edition 2011. International Labour Organization, Geneva, Switzerland. 57 pages.

International Labour Organization (ILO). 2002. Guidelines for the use of the ILO international classification of radiographs of pneumoconioses. Revised edition 2000. International Labour Organization, Occupational Safety and Health Series No. 22 (Rev.2000), Geneva, Switzerland. 50 pages.

International Labour Organization (ILO). 1980. Guidelines for the use of the ILO international classification of radiographs of pneumoconioses. International Labour Organization, Occupational Safety and Health Series, No.22 (Rev. 80). Geneva, Switzerland. 7 Pages.

International Organization for Standardization. 1995. Air Quality—Particle size fraction definitions for health-related sampling. ISO 7708–1995. International Organization for Standardization. Geneva, Switzerland.

International Organization for Standardization/International Electrotechnical Commission. 2017. Standard 17025—''General requirements for the competence of testing and calibration laboratories''. Reference number ISO/IEC 17025–2005(E). 3rd Ed. 2017–11. International Organization for Standardization/International Electrotechnical Commission. Geneva, Switzerland.

Irwig, L.M. and Rocks, P.. 1978. Lung function and respiratory symptoms in silicotic and nonsilicotic gold miners. American Review of Respiratory Disease. 117:429–435.

Jiang, H. and Luo, Y. 2021. Development of a roof bolter drilling control process to reduce the generation of respirable dust. International Journal of Coal Science & Technology. 8, 199–204. *https://doi.org/10.1007/s40789-021-00413-9.*

Jorna, T.H., Borm, P.J.A., Koiter, K.D., Slangen, J.J.M., Henderson, P. T., and Wouters, E.F.M. 1994. Respiratory effects and serum type III procollagen in potato sorters exposed to diatomaceous earth. International Archives of Occupational and Environmental Health. 66:217–222.

Joy, G.J. 2012. Evaluation of the Approach to Respirable Quartz Exposure Control in U.S. Coal Mines. Journal of Occupational and Environmental Hygiene. 9(2):65–8.

K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 294 (1988) Kambouchner, M. and Bernaudin, J–F. 2015. The Pathologist's View of Silicosis in 1930 and in 2015. The Johannesburg Conference Legacy. American Journal of Industrial Medicine 58:S48–S58.

Keil, A., Richardson, D., Westreich, D., Steenland, K. 2018. Estimating the impact of changes to occupational standards for silica exposure on lung cancer mortality. Epidemiology. 29(5): 658–665.

Kennecott Greens Creek Mining Company v. Mine Safety and Health Administration and Secretary of Labor, 476 F.3d 946 (D.C. Cir. 2007).

Kimura, K. Ohtsuka Y., Kaji H., Nakano I., Sakai I., Itabashi K., Igarashi T., Okamoto K. 2010. Progression of pneumoconiosis in coal miners after cessation of dust exposure: a longitudinal study based on periodic chest X-ray examinations in Hokkaido, Japan. Internal Medicine. 49(18):1949–56.

Koskela, R.S., Klockars, M., Laurent, H., and Holopaninen, M. 1994. Silica dust exposure and lung cancer. Scandinavian Journal of Work, Environment & Health. 20:407–416.

Kreiss K., Greenberg, L.M., Kogut, S.J.H., Lezotte, DC, Irvin, C.G., and Cherniack,

R.M. 1989. Hard-rock mining exposures affect smokers and nonsmokers differently. Results of a community prevalence study. American Review of Respiratory Disease. 139:1487–1493.

Kurth L., C. Halldin, Laney, A.S., and Blackley, D.J.. 2020. Causes of death among Federal Black Lung Benefits Program beneficiaries enrolled in Medicare, 1999–2016. American Journal of Industrial Medicine. 63(11):973–979.

Laney, A.S. and Attfield, M.D.. 2010. Coal workers' pneumoconiosis and progressive massive ibrosis are increasingly more prevalent among workers in small underground coal mines in the United States. Occupational and Environmental Medicine. 67:428–431.

Laney, A.S., Blackley, D.J. and Halldin, C.N. 2017. Radiographic disease progression in contemporary US coal miners with progressive massive fibrosis. Journal of Occupational and Environmental Medicine. 74(7): 517–520.

Laney, A.S., Petsonk, E.L., Hale, J.M., Wolfe, A.L. and Attfield, M.D. 2012b. Potential Determinants of Coal Workers' Pneumoconiosis, Advanced Pneumoconiosis, and Progressive Massive Fibrosis among Underground Coal Miners in the United States, 2005–2009. American Journal of Public Health. 102(2): S279–S283.

Laney A.S., Petsonk, E.L., and Attfield, M.D.. 2010. Pneumoconiosis among underground bituminous coal miners in the United States: Is silicosis becoming more frequent? Occupational and Environmental Medicine. 67:652–656.

Lapp, N. and Castranova, V. 1993. How Silicosis and Coal Workers' Pneumoconiosis Develop—A Cellular Assessment. Occupational Medicine: State of the Art Reviews. 8(1):35–56.

Lee, H.S., Phoon, W.H., and Ng, T.P.. 2001. Radiological progression and its predictive risk factors in silicosis. Occupational and Environmental Medicine. 58:467–471.

Liu, Y., Zhou, Y., Hznido, E., Shi, T., Steenland, K., He, X., and Chen, W. 2017a. Total and Cause-Specific Mortality Risk Associated with Low-Level Exposure to Crystalline Silica: A 44-Year Cohort Study from China. American Journal of Epidemiology. 186(4):481–490.

Maclaren, W.M., Soutar, C.A. 1985. Progressive massive fibrosis and simple pneumoconiosis in ex-miners. British Journal of Industrial Medicine. 42(11):734–40.

Malmberg, P., H. Hedenström, and Sundblad, B–M.. 1993. Changes in lung function of granite crushers exposed to moderately high silica concentrations: a 12 year follow up. British Journal of Industrial Medicine. 50:726–731.

Manfreda, J., Sidwall, G., Maini, K., West, P., Cherniack, R.M. 1982. Respiratory abnormalities in employees of the hard rock mining industry. American Review of Respiratory Disease. 126:629–634.

Mannetje, A., Steenland, K., Checkoway, H., Koskela, R–S., Koponen, M., Attfield, M., Chen, J., Hnizdo, E., DeKlerk, N., and Dosemeci, M. 2002a. Development of quantitative exposure data for a pooled exposure-response analysis of 10 silica cohorts. American Journal of Industrial Medicine. 42:73–86.

Mannetje A., Steenland, K., Attfield, M., Boffetta, P., Checkoway, H., DeKlerk, N., and Koskela, R–S. 2002b. Exposure-response analysis and risk assessment for silica and silicosis mortality in a pooled analysis of six cohorts. Occupational and Environmental Medicine. 59:723–728.

Mazurek, J.M. and Attfield, M.D. 2008. Silicosis mortality among young adults in the United States, 1968–2004. American Journal of Industrial Medicine. 51(8):568–578.

Mazurek, J.M. and Wood, J.M. 2008a. Silicosis-Related Years of Potential Life Lost Before Age 65 Years—United States, 1968—2005. Morbidity and Mortality Weekly Report. 57(28):771–775, July 18, 2008. *https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5728a3.htm.*

Mazurek, J.M. and Wood, J.M. 2008b. Morbidity and Mortality Weekly Report. Erratum, Silicosis-related years of potential life lost before age 65 years—United States, 1968–2005. Morbidity and Mortality Weekly Report. 57(30):829. August 1, 2008.

Mazurek, J.M., Wood, J., Blackley, D.J. and Weissman, D.N. 2018. Coal Workers' Pneumoconiosis–Attributable Years of Potential Life Lost to Life Expectancy and Potential Life Lost Before Age 65 Years—United States, 1999–2016. Morbidity and Mortality Weekly Report. 67(30): 819–24.

Mazurek, J.M., Schleiff, P.L., Wood, J.M., Hendricks, S.A., and Weston, A. 2015. Notes from the Field. Update: Silicosis Mortality—United States, 1999–2013. IN: Morbidity and Mortality Weekly Report. 64(23):653–654. June 19, 2015.

McDonald, J.C., McDonald, A.D., Hughes, J.M., Rando, R.J., and Weill, H. 2005. Mortality from lung and kidney disease in a cohort of North American industrial sand workers: An update. Annals of Occupational Hygiene Journal. 49(5):367–373.

McDonald, A.D., McDonald, J.C., Hughes, J.M., Rando, R.J., and Weill, H. 2001. Cohort mortality study of North American industrial sand workers. I. Mortality from lung cancer, silicosis and other causes. Annals of Occupational Hygiene Journal. 45:193–199.

McDonald, J.C., Cherry, N., McNamee, R., Burgess, G., and Turner, S. 1995. Preliminary analysis of proportional mortality in a cohort of British pottery workers exposed to crystalline silica. Scandinavian Journal of Work, Environment & Health. 21:63–65.

McLaughlin, J.K., Jing-Qiong, C., Dosemeci, M., Rong-An, C., Rexing, S.H., Zhien, W., Hearl, F.J., McCawley, M.A., and Blot, W.J. 1992. A nested case-control study of lung cancer among silica exposed workers in China. British Journal of Industrial Medicine. 49:167–171.

Meijer, E., Kromhout, H. and Heederik, D. 2001. Respiratory effects of exposure to low levels of concrete dust containing crystalline silica. American Journal of Industrial Medicine. 40(2):133–40.

Meijers, J.M., Swaen, G.M., Slangen, J.M., van Vliet, K and F. Sturmans. 1991. Long-term mortality in miners with coal workers' pneumoconiosis in the Netherlands: a pilot study. American Journal of Industrial Medicine. 19:43–50.

Meijers J.M., Swaen, G.M., Slangen, J.J., and van Vliet, C. 1988. Lung cancer among Dutch coal miners: a case-control study. American Journal of Industrial Medicine. 14:597–604.

Miller, B. and MacCalman, L.. 2010. Cause-specific mortality in British coal workers and exposure to respirable dust and quartz. Occupational and Environmental Medicine. 67(4):270–276. doi:10.1136/oem.2009.046151. Miller B., MacCalman, L. and Hutchison, P.. 2007. Mortality over an extended follow-up period in coal workers exposed to respirable dust and quartz. Institute of Medicine Research Report TM/07/06. November. 100 Pages.

Miller, B.G., Hagen, S., Love, R.G., Soutar, C.A., Cowie, H.A., Kidd, M.W., and Robertson, A. 1998. Risks of silicosis in coalworkers exposed to unusual concentrations of respirable quartz. Occupational and Environmental Medicine. 55:52–58.

Miller, B., Buchanan, D., Hurley, J.F., Hutchison, P.A., Soutar, C.A., Pilkington, A., and Robertson, A. 1997. The effects of exposure to diesel fumes, low-level radiation, and respirable dust and quartz, on cancer mortality in coalminers. Institute of Occupational Medicine. Historical Research Report TM/97/04. 139 pages.

Miller, B.G., Hagen, S., Love, R.G., Cowie, H.A., Kidd, M.W., Lorenzo, S., Tielemans, E.L.J.P. Robertson, A.. Soutar. C.A.. 1995. Historical Research Report, a Follow-Up Study of Miners Exposed to Unusual Concentrations of Quartz Research Report TM/95/03:164. Edinburgh: Institute of Occupational Medicine.

Mine Safety and Health Administration (MSHA). 2022. Coal silica exposure data MSHA MSIS RCS data for the Coal Industry, Aug 2016 through July 2021.

Mine Safety and Health Administration (MSHA). 2022. MNM silica exposure data. MSHA MSIS RCS data for the MNM Industry, 2005 through 2019.

Mine Safety and Health Administration (MSHA). 2022a. Metal/nonmetal operators exposure monitoring requirements guidance. *https://arlweb.msha.gov/S&HINFO/ExposureGuidance/ExposureGuidance.asp.* Accessed August 19, 2022.

Mine Safety and Health Administration (MSHA). MSHA, 2022c. Method P–2: X-ray diffraction determination of quartz and cristobalite in respirable metal/nonmetal mine dust. Technical Support. Pittsburgh Safety and Health Technology Center.

Mine Safety and Health Administration (MSHA). 2020b. Determination of quartz in respirable coal mine dust by Fourier

transform infrared spectrophotometry. Method P–7. Technical Support. Pittsburgh Safety and Health Technology Center.

Mine Safety and Health Administration (MSHA). 2014. Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. Final Rule. 79 FR 24813.

Mine Safety and Health Administration (MSHA). 2013d. Quantitative risk assessment in support of the final respirable coal mine dust rule. December 2013. *https://arlweb.msha.gov/endblacklung/docs/quantitativeanalysis.pdf.*

Mine Safety and Health Administration (MSHA). 1995. Respiratory Protective Devices. Final Rule. 60 FR 30398. June 8, 1995.

Miyazaki M. and Une, H. 2001. Risk of lung cancer among Japanese coal miners on hazard risk and interaction between smoking and coal mining. Journal of Occupational Health. 43:225–230.

Mohebbi I. and Zubeyri, T.. 2007. Radiological Progression and Mortality among Silica Flour Packers: A Longitudinal Study. Inhalation Toxicology. 19:1011–1017.

Montes, I.I., Fernández, G.R., Reguero, J., Mir, M.A.C, García-Ordás, E., Martínez, J.L.A., Martínez González, C. 2004a. Respiratory disease in a cohort of 2,579 coal miners followed up over a 20-year period. Chest. 126(2):622–9.

Montes, I.I., Rego, G., Camblor, C., Quero, A., Gonzalez, A., and Rodriguez, C. 2004b. Respiratory disease in aggregate quarry workers related to risk factors and Pi phenotype. Journal of Occupational and Environmental Medicine. 46:1150–1157.

Moshammer, H. and Neuberger, M. 2004. Lung cancer and dust exposure: Results of a prospective cohort study following 3260 workers for 50 years. Occupational and Environmental Medicine. 61:157–162.

National Center for Health Statistics (NCHS). 2020b. Table 292A. Death rates for 282 selected causes, by 5-year age groups, race, and sex: United States, 1979–98—(Rates per 100,000 population). Hyattsville, MD: US Dept of Health and Human Services.

National Center for Health Statistics. 2009. Table 291R. Death rates for 113 selected causes by 5-year age groups, Hispanic origin, race for non-Hispanic population, and sex: United States, 1999–2006 (Rates per 100,000 population). US Dept of Health and Human Services, National Center for Health Statistics, Hyattsville, MD. Available at *http://www.cdc.gov/nchs/nvss/mortality/gmwkh291r.htm.*

National Center for Health Statistics (NCHS). 1996. Vital statistics of the United States. Vol II. Mortality, part A. National Center for Health Statistics. Public Health Service, DHHS publ no (PHS) 96–1101. Washington, DC.

National Institute for Occupational Safety and Health (NIOSH). 2022. Certified Equipment list. *https://www.cdc.gov/niosh/npptl/topics/respirators/cel/default.html.* Accessed November 21, 2022, Downloaded January 5, 2023.

National Institute for Occupational Safety and Health (NIOSH). 2021a. Best practices for dust control in coal mining, second edition. By Colinet J.F., Halldin C.N., Schall J. Pittsburgh PA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 2021–119, IC 9532.

National Institute for Occupational Safety and Health (NIOSH). 2019a. Current intelligence bulletin 69: NIOSH practices in occupational risk assessment. By Daniels RD, Gilbert SJ, Kuppusamy SP, Kuempel ED, Park RM, Pandalai SP, Smith RJ, Wheeler MW, Whittaker C, Schulte PA. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2020–106, *https://doi.org/10.26616/NIOSHPUB2020106.*

National Institute for Occupational Safety and Health (NIOSH). 2019b. Dust control handbook for industrial minerals mining and processing. Second edition. By Cecala AB, O'Brien AD, Schall J, Colinet JF, Franta RJ, Schultz MJ, Haas EJ, Robinson J, Patts J, Holen BM, Stein R, Weber J, Strebel M, Wilson L, and Ellis M. Pittsburgh PA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 2019–124, RI 9701. *https://doi.org/10.26616/NIOSHPUB2019124.*

National Institute for Occupational Safety and Health (NIOSH). 2018b. Mining Product: FAST- Field Analysis of Silica Tool. E Cauda, L Chubb, J Britton.

National Institute for Occupational Safety and Health (NIOSH). 2017b. Current Intelligence Bulletin 68: NIOSH chemical carcinogen policy. By Whittaker, C., Rice, F., McKernan, L., Dankovic, D., Lentz, T.J., MacMahon, K., Kuempel, E., Zumwalde, R., Schulte, P. on behalf of the NIOSH Carcinogen and RELs Policy Update Committee. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 2017–100. December 2016.

National Institute for Occupational Safety and Health (NIOSH). 2014a. Specifications for medical examinations of coal miners—42 CFR part 37, Interim final rule. National Institute for Occupational Safety and Health. 79 FR 45110, August 4, 2014.

National Institute for Occupational Safety and Health (NIOSH). 2014b. Occupational respiratory disease surveillance. National Institute for Occupational Safety and Health. 2 pages. *https://www.cdc.gov/niosh/topics/surveillance/ords/state basedsurveillance.html.*

National Institute for Occupational Safety and Health. 2014e. Analysis of the silica percent in airborne respirable mine dust samples from U.S. operations. *https://www.cdc.gov/niosh/mining/UserFiles/works/pdfs/aotsp.pdf.*

National Institute for Occupational Safety and Health (NIOSH). 2012a. National survey of the mining population—Part I: Employees. Department of Health and Human Services Centers for Disease Control and Prevention National Institute for Occupational Safety and Health Office of Mine Safety and Health Research Pittsburgh, PA; Spokane, WA June 2012.

National Institute for Occupational Safety and Health (NIOSH). 2008c. Respirator use policy for protection against carcinogens. DHHS (NIOSH) *https://www.cdc.gov/niosh/respuse.html.*

National Institute for Occupational Safety and Health (NIOSH). 2007b. NIOSH pocket guide to chemical hazards. Third printing—September 2007, with minor technical changes. DHHS(NIOSH) Publication No. 2005–149. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Cincinnati, Ohio.

National Institute for Occupational Safety and Health (NIOSH). 2003b. NIOSH Manual of Analytical Methods, 4th ed., 3rd Suppl. Chapter R. Determination of airborne crystalline silica. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Publication No. 03–127. Cincinnati, Ohio.

National Institute for Occupational Safety and Health (NIOSH). 2002b. NIOSH hazard review: Health effects of occupational exposure to respirable crystalline silica. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2002–129.

National Institute for Occupational Safety and Health (NIOSH). 2000a. Health Hazards Evaluation Report (HETA 93–0795–2783) at U.S. Silica—Columbia. Cayce—W. Columbia, SC. BY: M.S. Filios. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health.

National Institute for Occupational Safety and Health (NIOSH). 2000b. Health Hazards Evaluation Report (HETA 91–0375–2779) at U.S. Silica Company, Berkeley Springs. Berkeley Springs, West Virginia. BY: M.S. Filios.

National Institute for Occupational Safety and Health (NIOSH). 1995a. Occupational exposure to respirable coal dust. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health.

National Institute for Occupational Safety and Health (NIOSH). 1995b. A NIOSH

Technical Guide. Guidelines for Air Sampling and Analytical Method Development and Evaluation. By Kennedy, Ph.D. E., Fischbach, T., Song, Ph.D., R., Eller, Ph.D., P., and Shulman, Ph.D., S. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control. NIOSH, Division of Safety Research. May 1995.

National Institute for Occupational Safety and Health (NIOSH). 1975. NIOSH Technical Information—Exposure measurement action level and occupational environmental variability. By Leidel, NA., Busch KA., and Crouse WE. US Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Division of Laboratories and criteria Development, Cincinnati, Ohio. HEW Publication No. (NIOSH) 76–131.

NIOSH (1975). Exposure measurement action level and occupational environmental variability. Cincinnati, OH: U.S. Department of Health, Education and Welfare, Centers for Disease Control, National Institute for Occupational Safety and Health, HEW (NIOSH) Publication No. 76–131 [*http://www.cdc.gov/niosh/docs/76-13I1pdfs/76-131.pdf*].

National Institute for Occupational Safety and Health (NIOSH). 1974. Criteria for a recommended standard: Occupational exposure to crystalline silica. US Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, NIOSH. HEW Publication No. (NIOSH) 75–120. Washington, DC.

National Mining Association (NMA) et al. v. Secretary of Labor, et al. 116 F.3d 520, 527–28. United States Court of Appeals, District of Columbia Circuit, Jun 17, 1997.

National Mining Association Alabama Coal Association, et al. v. U.S. Department of Labor and Mine Safety and Health Administration. US Court of Appeals—11th Circuit No. 14–11942; 812 F.3d 843, 866. January 25, 2016.

National Mining Association v. United Steel Workers. 2021. 985 F.3d 1309, 1319. United States Court of Appeals, Eleventh Circuit. No. 17–11207. January 22, 2021.

National Toxicology Program (NTP). 2000. Fact Sheet: The Report on Carcinogens—9th Edition. News Release. National Toxicology Program, Department of Health and Human Services. 13 page.

National Toxicology Program (NTP). 2016. Silica, Crystalline (Respirable Size). Report on carcinogens, Fourteenth Edition. Department of Health and Human Services, Public Health Service, National Toxicology Program. Washington, DC.

Ndlovu N., Richards, G., Vorajee, N., Murray, J. 2019. Silicosis and pulmonary tuberculosis in deceased female South African miners. Occupational Medicine 69:272–278.

Nelson, G. 2013. Occupational respiratory diseases in the South African mining industry, Global Health Action, 6:1, 19520, DOI: 10.3402/gha.v6i0.19520.

Neukirch, F., Cooreman, J., Korobaeff, M., and Pariente, R. 1994. Silica exposure and chronic airflow limitation in pottery workers. Archives of Environmental Health. 49:459–464.

Ng T.P. and Chan, S.L.. 1992. Lung function in relation to silicosis and silica exposure in granite workers. European Respiratory Journal 5:986–991.

Ng, T.P. and Chan, S.L.. 1991. Factors associated with massive fibrosis in silicosis. Thorax. 46:229–232.

Ng, T.P., Ng, Y.L., Lee, H.S., Chia, K.S., and Ong, H.Y. 1992a. A study of silica nephrotoxicity in exposed silicotic and non-silicotic workers. British Journal of Industrial Medicine. 49:35–37.

Ng, T.P., Phoon, W.H., Lee, H.S., Ng, Y. L., and Tan, K.T. 1992b. An epidemiological survey of respiratory morbidity among granite quarry workers in Singapore: Chronic bronchitis and lung function impairment. Annals Academy of Medicine Singapore. 21:312–317.

Ng, T.P., Chan, S.L., and Lam, K.P.. 1987a. Radiological progression and lung function in silicosis: A ten year follow up study. British Medical Journal. 295:164–168.

Nolan, R.P., Langer, A.A., Harington, J.S., Oster, G., and Selikoff, I.J. 1981. Quartz hemolysis as related to its surface functionalities. Environmental Research. 26:503–520.

North America's Building Trades unions v Occupational Safety and Health Administration. No. 16–1105. Consolidated with 16–1113, 16–1125, 16–1126, 16–1131, 16–1137, 16–1138, 16–1146. United States Court of Appeals for the District of Columbia Circuit. December 22, 2017.

Nuyts, G.D., Van Vlem, E., De Vos, A., Daelemans, R.A., Rorive, G., Elseviers, M.M., Schurgers, M., Segaert, M., D'Haese, P.C., and De Broe, M.E. 1995. Wegener granulomatosis is associated to exposure to silicon compounds: A case-control study. Nephrol Dial Transplant. 10:1162–1165.

Occupational Safety and Health Administration (OSHA). 2016a. Occupational exposure to respirable crystalline silica; final rule. 81 FR 16286, March 25, 2016.

Occupational Safety and Health Administration (OSHA). 2013b. Occupational exposure to respirable crystalline silica—review of health effects literature and preliminaryquantitative risk. Docket OSHA–2010–0034.

Occupational Safety and Health Administration (OSHA). 2006. Assigned protection factors. 71 FR 50122, August 24, 2006.

Occupational Safety and Health Administration (OSHA). 2004. Controlled negative pressure REDON fit testing protocol. 69 FR 46986, August 4, 2004.

Office of Inspector General (OIG) Office of Audit. 2020. MSHA needs to improve efforts to protect coal miners from respirable crystalline silica. November 12, 2020.

Ogawa S., H. Imai, and Ikeda, M.. 2003a. A 40-year follow-up of whetstone cutters on silicosis. Industrial Health. 41:69–76.

Ogawa S., H. Imai, and Ikeda, M.. 2003b. Mortality due to silico-tuberculosis and lung cancer among 200 whetstone cutters. Industrial Health. 41:231–235.Management and Budget. 70 FR 2664, January 14, 2005.

Oni, T. and Ehrlich, R.. 2015. Complicated silicotuberculosis in a South African gold miner: A Case Report. American Journal of Industrial Medicine. 58:697–701.

Onyije, F.M., Olsson, A., Erdmann, F., Magnani, C., Petridou, E., Clavel, J., Miligi, L., Bonaventure, A., Ferrante, D., Piro, S. and Peters, S., 2022. Parental occupationalexposure to combustion products, metals, silica and asbestos and risk of childhood leukaemia: Findings from the Childhood Cancer and Leukaemia International Consortium (CLIC). Environment international, 167, p.107409.

Organiscak, J.A., Cecala, A.B., Zimmer, J.A. Holen, B., Baregi, J.R. 2016. Air cleaning performance of a new environmentally controlled primary crusher operator booth/Min Eng. 2016 February; 68(2): 31–37. doi:10.19150/me.6469.

Pan, G., Takahashi, K., Feng, Y., Liu, L., Liu, T., Zhang, S., Liu, N., Okubo, T., and Goldsmith, D.S., 1999. Nested case-control study of esophageal cancer in relation to occupational exposure to silica and other dusts. American Journal of Industrial Medicine. 35:272–280.

Park, R., Rice, F., Stayner, L., Smith, R., Gilbert, S., and Checkoway, H. 2002. Exposure to crystalline silica, silicosis, and lung disease other than cancer in diatomaceous earth industry workers: a quantitative risk assessment. Occupational and Environmental Medicine. 59:36–43.

Parker, J.E. and Banks, D.E. 1998. Lung diseases in coal workers. Chapter 11. Occupational lung disease- an international perspective. Edited by Daniel E. Banks and John E. Parker. Published in 1998 by Chapman & Hall. London ISBN O 412 73630 6. Pp 161–181.

Parks, C., Conrad, K., and Cooper, G. 1999. Occupational exposure to crystalline silica and autoimmune disease. Environmental Health Perspectives. 107(suppl 5):793–802.

Payson, S. 2021. Alternative Measurements of Indian Country: Understanding their Implications for Economic, Statistical, and Policy Analysis. Monthly Labor Review, U.S. Bureau of Labor Statistics.

Pukkala, E., Guo, J., Kyyrönen, P., Lindbohm, M.L., Sallmén, M., Kauppinen, T. 2005. National job-exposure matrix in analyses of census-based estimates of occupational cancer risk. Scandinavian Journal of Work, Environment & Health. 31:97–107.

Raabe, O.G. and Stuart B.O. 1999. Sampling criteria for the thoracic and respirable fractions. In J. H. Vincent (Ed.), Particle

Size-Selective Sampling for Particulate Air Contaminants, Chapter 4, ACGIH. Cincinnati, OH. Pages 73–95.

Rahimi, E., Shekarian, Y., Shekarian, N. et al. Investigation of respirable coal mine dust \ (RCMD) and respirable crystalline silica (RCS) in the U.S. underground and surface coal mines. 2023. Sci Rep 13, 1767 *https://doi.org/10.1038/s41598-022-24745-x.*

Rando, R.J., Shi, R., Hughes, J.M., Weill, H., McDonald, A.D., and McDonald, J.C. 2001. Cohort mortality study of North American industrial sand workers. III. Estimation of pastand present exposures to respirable crystalline silica. Annals of Occupational Hygiene Journal. 45:209–216.

Rastogi, S.K., Gupta, B.N., Chandra, H., Mathur, N., Mahendra, P.N., and Husain, T. 1991. A study of the prevalence of respiratory morbidity among agate workers. International Archives of Occupational and Environmental Health. 63:21–26.

Registry of Toxic Effects of Chemical Substances [RTECS]. 2016. Silica, crystalline—quartz.

Registry of Toxic Effects of Chemical Substances. RTECS# VV7330000. NIOSH, Education and Information Division.

Reid, P.J. and Sluis-Cremer, G.K.. 1996. Mortality of white South African gold miners. Occupational and Environmental Medicine. 53:11–16.

Reynolds L., Blackley, D., Colinet, J., Potts, J., Storey, E., Short, C., Carson, R., Clark, K., Laney, A., Halldin C. 2018b. Work practices and respiratory health status of Appalachian coal miners with progressive massive fibrosis. Journal of Occupational and Environmental Medicine. 60(11): e575-e581.

Rice, F.L., Park, R., Stayner, L., Smith, R., Gilbert, S., and Checkoway, H. 2001. Crystalline silica exposure and lung cancer mortality in diatomaceous earth industry workers: A quantitative risk assessment. Occupational and Environmental Medicine. 58:38–45.

RJ Lee Group. Laboratory Testing Guide. April 2021. 1–97.

Roscoe, R., Deddens, J.A., Salvan, A., and Schnorr, T.M. 1995. Mortality among Navajo uranium miners. American Journal of Public Health. 85(4):535–540.

Rosenman, K.D., Reilly, M.J., and Henneberger, P.K. 2003. Estimating the total number of newly-recognized silicosis cases in the United States. American Journal of Industrial Medicine. 44:141–147.

Rosenman, K.D., Moore-Fuller, M., and Reilly M.J. 2000. Kidney disease and silicosis. Nephron. 85:14–19.

Rosental, P. 2017. Silicosis: A World History. Baltimore: Johns Hopkins University Press., doi:10.1353/book.51996.

Rubio-Rivas, M., Moreno, R., and Corbella, X. 2017. Occupational and environmental scleroderma. Systematic review and meta-analysis. Clinical Rheumatology. 36:569–582.

Ruckley, V.A., Fernie, J.M., Chapman, J.S., Collings, P., Davis, J.M., Douglas, A.N., Lamb, D., and Seaton, A.. 1984. Comparison of radiographic appearances with associated pathology and lung dust content in a group of coal workers. British Journal of Industrial Medicine. 41:459–467.

Ruckley, V.A., Chapman J.S., Collings P.L., Douglas A.N., Fernie J.M., Lamb D., Davis J.M.G. 1981. Autopsy study of coalminers' lungs—phase II. Final report on CEC Contract 7246- 15/8/001. Historical Research Report—Research Report TM/81/18. Institute of Occupational Medicine. Edinburgh.

Samet, J.M., Young, R.A., Morgan, M.V., and Humble, C.G. 1984. Prevalence of respiratory abnormalities in New Mexico uranium miners. Health Physics. 46:361–370.

Sanderson, W.T., Steenland, K., and Deddens, J.A. 2000. Historical respirable quartz exposures of industrial sand workers: 1946–1996. American Journal of Industrial Medicine. 38:389–398.

Schins, R.P.F., Duffins, R., Hohr, D., Knappen, A.M., Shi, T., Weishaupt, C., Stone, V., Donaldsen, K., and Borm, P.J.A. 2002. Surface modification of quartz inhibits toxicity,particle uptake, and oxidative DNA damage in human lung epithelial cells. Chemical Research in Toxicology.

Schmajuk, G., Trupin, L., Yelin, E., and Blanc, P.D. 2019. Prevalence of arthritis and rheumatoid arthritis in coal mining counties of the U.S. Arthritis Care and Research. 71(9):1209–1215.

Schubauer-Berigan, M.K., Daniels, R.D., and Pinkerton, L.E. 2009. Radon exposure and mortality among white and American Indian uranium miners: an update of the ColoradoPlateau cohort. American Journal of Epidemiology. 169(6):718–30. Epub 2009 Feb 10.

se L.A., Li, Z.M., Wong, T.W., Fu, Z.M., and Yu, I.T.S. 2007b. High prevalence of accelerated silicosis among gold miners in Jiangxi, China. American Journal of Industrial Medicine. 50(12):876–880.

Seaman, C.E., Shahan, M.R., Beck, T.W., and Mischler, SE 2020. Design of a water curtain to reduce accumulations of float coal dust in longwall returns. International Journal ofMining Science and Technology. 30(4):443–447.

Seixas, N.S., Neyer, N.J., Welp, E.A.E., and Checkoway, H. 1997. Quantification of historical dust exposures in the diatomaceous earth industry. Annals of Occupational HygieneJournal. 41:591–604.

Selikoff IJ. 1978. Carcinogenic potential of silica compounds. In: Bendz G and I. Lindqvist, eds. Biochemistry of Silicon and Related Problems. 2016. New York: Plenum Press. Pages 311–336. SGS Galson. Another Lower Quantitation Level: Crystalline Silica Cristobalite. Retrieved December 22, 2022, from Another Lower Quantitation Level: Crystalline Silica Cristobalite SGS Galson.

Sherson, D. and Lander, F. 1990. Morbidity of pulmonary tuberculosis among silicotic and non-,silicotic foundry workers in Denmark. Journal of Occupational Medicine. 32:110–113.

Shi X., Castranova, V., Halliwell, B., and Vallythan, V. 1998. Reactive oxygen species and silica-induced carcinogenesis. Journal of Toxicology and Environmental Health, Part B. 1:181–197.

Shi, X., Dalal, N.S., Hu, X.N., and Vallythan, V. 1989. The chemical properties of silica particle surface in relation to silica-cell interactions. Journal of Toxicology and Environmental Health. 27:435–454.

Sluis-Cremer, G.K., Walters, L.G. and Sichel, H.S.. 1967. Chronic bronchitis in miners and non-miners: An epidemiological survey of a community in the gold-mining area in the Transvaal. British Journal of Industrial Medicine. 24:1–12.

Small Business Administration, Office of Advocacy, How to Comply with the Regulatory Flexibility Act, August 2017.

Soutar, C.A., Hurley, J.F., Miller, B.G., Cowie, H.A., and Buchanan, D. 2004. Dust concentrations and respiratory risks in coalminers: key risk estimates from the British pneumoconiosis field research. Occupational and Environmental Medicine. 61:477–481.

Starzynski, Z., Marek, K.,. Kujawska, A, and Szymczak, W.. 1996. Mortality among different occupational groups of workers with pneumoconiosis: results from a register-basedcohort study. American Journal of Industrial Medicine. 30:718–725.

Steenland, K. 2005b. One agent, many diseases: Exposure-response data and comparative risks of different outcomes following silica exposure. American Journal of Industrial Medicine. 48:16–23.

Steenland, K. and Brown, D.. 1995a. Mortality study of gold miners exposed to silica and non-asbestiform amphibole minerals: An update with 14 more years of follow-up. American Journal of Industrial Medicine. 27:217–229.

Steenland, K. and Brown, D.. 1995b. Silicosis among gold miners: Exposure-response analyses and risk assessment. American Journal of Public Health. 85:1372–1377.

Steenland, K. and Sanderson, W. 2001. Lung cancer among industrial sand workers exposed to crystalline silica. American Journal of Epidemiology. 153(7):695–703.

Steenland K., Attfield, M., and Mannejte, A. 2002a. Pooled analyses of renal disease mortality and crystalline silica exposure in three cohorts. Annals of Occupational Hygiene Journal. 46:4–9.

Steenland K., Mannetje, A., Boffetta, P., Stayner, L., Attfield, M., Chen, J., Dosemeci, M., DeKlerk, N., Hnizdo, E., Koskela, R., and Checkoway, H. 2001a. Pooled exposure-response analyses and risk assessment for lung cancer in 10 cohorts of silica-exposed workers: an IARC multicentre study. International Agency for Research on Cancer. Cancer Causes Control. 12(9):773–784.

Steenland, K., Sanderson, W., and Calvert, G.M.. 2001b. Kidney disease and arthritis in a cohort study of workers exposed to silica. Epidemiology. 12:405–412.

Steenland, N.K., Thun, M.J., Ferguson, C.W., and Port, F.K. 1990. Occupational and

other exposures associated with male end-stage renal disease: A case/control study. American Journal of Public Health. 80:153–157.

Stern F., Lehman, E., and Ruder, A.. 2001. Mortality among unionized construction plasterers and cement masons. American Journal of Industrial Medicine. 39:373–388.

Suhr H., Bang, B., and Moen, B.. 2003. Respiratory health among quartz-exposed slate workers—A problem even today. Occupational Medicine. 53:406–407.

TeWaterNaude J.M., Ehrlich, R.I., Churchyard, G.J., Pemba, L., Dekker, K., Vermeis, M., White, NW, Thompson, M.L., and Myers, J.E. 2006. Tuberculosis and silica exposure in South African gold miners. Occupational and Environmental Medicine. 63:187–192.

Theriault G.P., Burgess, W.A., DiBerardinis, L.J., and Peters, J.M. 1974a. Dust exposure in the Vermont granite sheds. Archives of Environmental Health. 28:12–17.

Theriault G.P., J.M. Peters, and L.J. Fine. 1974b. Pulmonary function in granite shed workers of Vermont. Archives of Environmental Health. 28:18–22.

Tomaskova H., J. Horacek, H. Slachtova, A. Splichalova, P., Riedlova, A. Daleck, Z. Jirak, and R. Madar. 2022. Analysis of histopathological findings of lung carcinoma in Czech black coal miners in association with coal workers' pneumoconiosis. International Journal of Environmental Research and Public Health. 19: 710–719. *https://doi.org/10.3390/ijerph19020710.*

Tomaskova H., Splichalova, A., Slachtova, H., and Jirak, Z. 2020. Comparison of lung cancer risk in black coal miners based on mortality and incidence. Medycyna Pracy. 71(5):513–518.

Tomaskova H., Splichalova, A., Slachtova, H., Urban, P., Hajdukova, Z., Landecka, I., Gromnica, R., Brhel, P., Pelclova, D., and. Jirak, Z. 2017. Mortality in miners with coal workers' pneumoconiosis in the Czech Republic in the period 1992–2013. International Journal of Environmental Research and Public Health. 14(3):269–280. doi:10.3390/ijerph14030269.

Tomaskova H., Jirak, Z., Splichalova, A., and Urban, P.. 2012. Cancer incidence in Czech black coal miners in association with coal workers' pneumoconiosis. International Journal of Occupational Medicine and Environmental Health. 25(2):137–144.

ToxaChemica, International, Inc. 2004. Silica Exposure: Risk assessment for lung cancer, silicosis, and other diseases by Steenland, N.K. and Bartell, S.M. Draft final report prepared under Department of Labor Contract No. J–9–F–0–0051. Gaithersburg, Maryland.

Tse, L.A., Li, Z.M., Wong, T.W., Fu, Z.M., and Yu, I.T.S. 2007b. High prevalence of accelerated silicosis among gold miners in Jiangxi, China. American Journal of Industrial Medicine. 50(12):876–880.

Tsuda, T., Mino, Y., Babazono, A., Shigemi, J., Otsu, T., Yamamot, E. 2001. A case-control study of the relationships among silica exposure, gastric cancer, and esophageal cancer. American Journal of Industrial Medicine. 39:52–57.

U.S. Department of the Interior, U.S. Geological Survey, Mineral Commodities Summaries 2021, January 29, 2021, page 9.

U.S. Department of Labor, Mine Safety and Health Administration. Respirable Silica (Quartz), Request for Information. **Federal Register** Notice, 84 FR 45452–45456, August 29, 2019.

U.S. Department of Labor, Mine Safety and Health Administration. 1983. Mine safety and health. Fall. Pg 6.

United States Department of Labor (USDOL). 1996. Report of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers.

Vacek, P., Glenn, R., Rando, R., Parker, J., Kanne, J., Henry, D., Meyer, C. Exposure 2012;response relationships for silicosis and its progression in industrial sand workers. Scandinavian Journal of Work, Environment and Health. 2019. 45(3):280–288. doi:10.5271/sjweh.3786.

Vallyathan, V., Landsittel, D.P., Petsonk, E.L., Kahn, J., Parker, J.E., Osiowy, K.T. and Green, F.H.Y. 2011. The influence of dust standards on the prevalence and severity of coal worker's pneumoconiosis at autopsy in the United States of America. Arch Pathol Lab Med. 135:1550–1556.

Verma, D.K., Ritchie, A.C. and Muir, DC 2008. Dust content of lungs and its relationships to pathology, radiology and occupational exposure in Ontario hardrock miners. American Journal of Industrial Medicine. 51(7):524–31.

Verma, D.K., Muir, D.F.C., Stewart, M.L., Julian, J.A., and Ritchie, A.C. 1982. The dust content of the lungs of hard-rock miners and its relationship to occupational exposure, pathological and radiological findings. Annals of Occupational Hygiene Journal. 26:401–409.

Vihlborg, P., Bryngelsson I–L., Andersson L., Graff P. 2017. Risk of sarcoidosis and seropositive rheumatoid arthritis from occupational silica exposure in Swedish iron foundries: a retrospective cohort study. BMJ Open. 7(7):e016839. doi:10.1136/bmjopen-2017–016839.

Wade, W.A., Petsonk, E.L., Young, B., and Mogri, I. 2011. Severe occupational pneumoconiosis among West Virginia coal miners: 138 cases of progressive massive fibrosis compensated between 2000–2009. Chest. 139(6):1458–62.

Wallden, A., Graff, P., Bryngelsson, I.-L., Fornander, L., Wiebert, P., and Vihlborg, P.. 2020. Risks of developing ulcerative colitis and Crohn's disease in relation to silica dust exposure in Sweden: a case-control study. BMJ Open. 10:e034752. doi:10.1136/bmjopen-2019–034752.

Wang, D., Yang, M., Ma, J., Zhou, M., Wang, B., Shi, T., and Chen, W. 2021. Association of silica dust exposure with mortality among never smokers: a 44-year cohort study. International Journal of Hygiene and Environmental Health. 236: Article 113793.

Wang, D., M. Yang, Y. Liu, J. Ma, T. Shi, and W. Chen. 2020a. Association of silica dust exposure and cigarette smoking with mortality among mine and pottery workers in China. Journal of the American Medical Association (JAMA) Network Open. 3(4):e202787. doi:10.1001/jamanetworkopen.2020.2787.

Wang, D., M. Zhou, Y. Liu, J. Ma, M. Yang, T. Shi, and W. Chen. 2020b. Comparison of risk of silicosis in metal mines and pottery factories: a 44-year cohort study. Chest 158(3):1050–1059.

Wang, X., Yano, E., Nonaka, K., Wang, M., and Wang, Z. 1997. Respiratory impairments due to dust exposure: A comparative study among workers exposed to silica, asbestos, and coalmine dust. American Journal of Industrial Medicine. 31:495–502.

Watts, W., Huynh, T. and Ramachandran, G. 2012. Quartz concentration trends in metal and nonmetal mining. Journal of Occupational and Environmental Hygiene. 9(12):720–732.

Weiderpass, E., Vainio, H., Kauppinen, T., Vasama-Neuvonen, K., Partanen, T., and Pukkala, E. 2003. Occupational exposures and gastrointestinal cancers among Finnish women. Journal of Occupational and Environmental Medicine. 45:305–315.

Wernli, K.J., Fitzgibbons, E.D., Ray, R.M., Gao, D.L., Li, W., Seixas, N.S., Camp, J.E., Astrakianakis, G., Feng, Z., Thomas, D.B., and Checkoway, H. 2006. Occupational risk factors for esophageal and stomach cancers among female textile workers in Shanghai, China. American Journal of Epidemiology. 163:717–725.

Wiles, F.J. and Faure, M.H. 1977. Chronic obstructive lung disease in gold miners. In: Inhaled Particles IV, Part 2. Walton WH, ed. Oxford: Pergamon Press.

Windau, J., Rosenman, K., Anderson, H., Hanranhan, L., Rudolph, L., Stanbury, M., and Stark, A. 1991. The identification of occupational lung disease from hospital discharge data. Journal of Occupational Medicine. 33(10):1061–1066.

Winter, P.D., Gardner, M.J., Fletcher, A.C., and Jones, R.D. 1990. A mortality follow-up study of pottery workers: Preliminary findings on lung cancer. International Agency on Research for Cancer Sci Publ 97:83–94.

Wright, J.L., Harrison, N., Wiggs, B., and Churg, A. 1988. Quartz but not iron oxide causes air-flow obstruction, emphysema, and small airways lesions in the rat. American Review of Respiratory Disease. 138:129–135.

Xu, Z., Morris Brown L., Pan, L.M., Liu, T–F., Stone, B.J., Guan, D.X., Liu, Q., Sheng, J–H., Dosemeci, M., Fraumeni, Jr, J., and Blot, J.W. 1996a. Cancer risks among iron and steel workers in Anshan, China, Part I: Proportional mortality ratio analysis. American Journal of Industrial Medicine. 30:1–6.

Yang, H., Yang, L., Zhang, J.L. and Chen, J. 2006. Natural course of silicosis in dust-exposed workers. Journal of Huazhong

University of Science and Technology. [Med Sci]. 26: 257–260.
Yu I.T., Tse, L.A., Wong, T.W., Leung, C.C., Tam, C.M, and Chan, A. C.K. 2005. Further evidence for a link between silica dust and esophageal cancer. International Journal of Cancer. 114:479–483.
Yu, Q., Fu, G., Lin, H., Zhao, Q., Liu, Y., Zhou, Y., Shi, Y., Zhang, L., Wang, Z., Zhang, Z., Qin, L. and Zhou, T. 2020. Influence of silica particles on mucociliary structure andMUC5B expression in airways of C57BL/6 mice. Experimental Lung Research. 46(7):217–225. doi: 10.1080/01902148.2020.1762804.

XIV. Appendix

Appendix A

Description of MSHA Respirable Crystalline Silica Samples

This document describes the respirable crystalline silica samples used in this rulemaking. The Mine Safety and Health Administration (MSHA) collected these samples from metal/nonmetal (MNM) and coal mines and analyzed the data to support this rulemaking. Technical details are discussed in the following attachments.

MNM Respirable Dust Sample Dataset, 2005–2019

From January 1, 2005, to December 31, 2019, 104,354 valid MNM respirable dust samples were entered into the MSHA Technical Support Laboratory Information Management System (LIMS) database.[75] The dataset includes MNM mine respirable dust personal exposure samples collected by MSHA inspectors. A total of 57,824 samples contained a respirable dust mass of 0.100 mg or greater (referred as ''sufficient-mass dust samples''), while a total of 46,530 samples contained a respirable dust mass of less than 0.100 mg (referred as ''insufficient-mass dust samples'').

Respirable dust samples collected by MSHA inspectors are assigned a three-digit ''contaminant code'' based on the contaminant in the sample. MSHA's contaminant codes group contaminants based on their health effects[76] and are assigned by the MSHA Laboratory based on sample type and analysis results. The codes link information, such as contaminant description, permissible exposure limit (PEL), and the units of measure for each contaminant sampled.

The MNM respirable crystalline silica dataset includes five contaminant codes.

MNM Respirable Dust Sample Contaminant Codes

- Contaminant code 521—MNM respirable dust samples that were not analyzed for respirable crystalline silica.
- Contaminant code 523—MNM respirable dust samples containing 1 percent or more quartz.
- Contaminant code 525—MNM respirable dust samples containing cristobalite.
- Contaminant code 121—MNM respirable dust samples containing less than 1 percent quartz where the commodity is listed as a ''nuisance particulate'' in Appendix E of the TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973 (reproduced in Table A–1).
- Contaminant code 131—MNM respirable dust samples containing less than 1 percent quartz where the commodity is not listed as a ''nuisance particulate'' in Appendix E of the 1973 ACGIH TLV® Handbook.

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Table A-1: Reproduction of TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973 Appendix E, Threshold Limit Values Material List: "Some Nuisance Particulates*; Threshold Limit Value – 10 mg/m^3"

Alundum (Al_2O_3)	Gypsum	Rouge
Calcium Carbonate	Kaolin	Silicon Carbide
Cellulose (paper fiber)	Limestone	Starch
Corundum (Al_2O_3)	Magnesite	Sucrose
Emery	Marble	Tin Oxide
Glass, fibrous** or dust	Pentaerythritol	Titanium Dioxide
Glycerin Mist	Plaster of Paris	Vegetable oil mists (except castor, cashew nut, or similar irritant oils)
Graphite (synthetic)	Portland Cement	

*When toxic impurities are not present, e.g., quartz < 1 percent
** <5-7 μm in diameter
Note: This list contains examples of certain materials that are considered "nuisance" particulates when the material is in dust form. This list is not intended to be exclusive. If the miner sampled is exposed to one or more of the listed materials, then the TLV® for "nuisance" dust should be applied.
Source: American Conference of Governmental Industrial Hygienists (ACGIH). 1973. TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973. Cincinnati, Ohio.

MNM Respirable Dust Samples With a Mass of at Least 0.100 milligram (mg) (Sufficient-Mass Dust Samples)

The 57,824 samples that contained at least 0.100 mg of respirable dust were analyzed to quantify their respirable crystalline silica content—mostly respirable quartz but also respirable cristobalite. The respirable crystalline silica concentrations were entered into the MSHA Standardized Information System (MSIS) database (internal facing) and Mine Data Retrieval System (MDRS) database (public facing). Those MNM respirable dust samples with a mass of at least 0.100 mg are analyzed and contained in MSIS. MSIS and MDRS differ from LIMS in that some of the fields associated with a sample can be modified or corrected by the inspector. These correctable fields include Mine ID, Location Code, and Job Code. Inspectors cannot access or modify the fields in the LIMS database.

[75] Only valid (non-void) MNM respirable dust samples were included in the LIMS dataset. Voided samples include any samples with a documented reason which occurred during the sampling and/or the MSHA's laboratory analysis for invalidating the results.

[76] For example, contaminant code 523 indicates that dust from that sample contained 1 percent or more respirable crystalline silica (quartz). Exposure to respirable crystalline silica has been linked to the following health outcomes: silicosis, non-malignant respiratory disease, lung cancer, and renal disease.

From the database, 55 samples[77] were removed because they were erroneous, had an incorrect flow rate, had insufficient sampling time, or were duplicated. This resulted in a final dataset of 57,769 MNM samples that contained a mass of at least 0.100 mg of respirable dust. Datasets containing the analyzed samples that MSHA removed and retained can be found in the rulemaking docket MSHA–2023–0001.

MNM Respirable Dust Samples With a Mass of Less Than 0.100 mg (Insufficient-Mass Samples)

The LIMS database also included 46,530 MNM respirable dust samples that contained less than 0.100 mg of respirable dust. These samples did not meet the minimum dust mass criterion of 0.100 mg and were not analyzed for respirable crystalline silica by MSHA's Laboratory.

From these 46,530 samples, 167 samples[78] were removed because they were erroneous, had an incorrect flow rate, or had insufficient sampling time. This resulted in 46,363 remaining MNM samples containing less than 0.100 mg of respirable dust. These samples were assigned to contaminant code 521, indicating that the samples were not analyzed for quartz. Datasets containing the unanalyzed samples that MSHA removed and retained can be found in the rulemaking docket MSHA–2023–0001.

All MNM Respirable Dust Samples

After removing the 222 samples mentioned above (55 sufficient-mass and 167 insufficient-mass), the dataset consisted of 104,132 MNM respirable dust samples: 57,769 sufficient-mass samples and 46,363 insufficient-mass samples. A breakdown of the MNM respirable dust samples is included in Table A–2.

Table A-2: Distribution of MNM Respirable Dust Samples

Contaminant Code	Description	Number of Samples
	Total LIMS samples with dust mass ≥ 0.100 mg (sufficient-mass samples)	*57,824*
	Samples removed with dust mass ≥ 0.100 mg	55
	Samples retained with dust mass ≥ 0.100 mg	**57,769**
523	Dust respirable fraction, ≥ 1% quartz	39,772
525	Containing cristobalite	7
121	Nuisance dust, listed, respirable fraction, <1% silica	9,256
131	Unlisted dust, respirable fraction, <1% silica	8,734
	Total LIMS samples with dust mass < 0.100 mg (insufficient-mass samples)	*46,530*
	Samples removed with dust mass < 0.100 mg	167
	Samples retained with dust mass < 0.100 mg	**46,363**
521	Respirable dust samples not analyzed for quartz	46,363
	Total Samples	*104,354*
	Total Samples Removed	222
	Total Samples Retained	**104,132**

Sources: MSHA MDRS/MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220615); MSHA Personal Health Samples Public Dataset.

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Coal Respirable Dust Sample Dataset, 2016–2021

From August 1, 2016, to July 31, 2021, 113,607 valid respirable dust samples from coal mines were collected by MSHA inspectors and entered in the LIMS database.[79] For coal mines, the analysis is based on samples collected by inspectors beginning on August 1, 2016, when Phase III of MSHA's 2014 respirable coal mine dust (RCMD) standard went into effect. Samples taken prior to implementation of the RCMD standard would not be representative of current respirable crystalline silica exposure levels in coal mines.

Of these samples collected by MSHA inspectors, 67,963 samples were analyzed for respirable crystalline silica; 45,644 samples

[77] There were 55 samples removed: 7 samples had no detected mass gain (denoted as "0 mg"); 1 sample was a partial shift that was not originally marked correctly; 1 sample was removed at the request of the district; 44 samples had flow rates outside the acceptable range of 1.616–1.785 L/min; and 2 samples were duplicates of samples that were already in the dataset. This resulted in the final sample size of 57,769 = 57,824 − (7 + 1 + 1 + 44 + 2).

[78] There were 167 samples removed: 75 samples had a cassette mass less than −0.03 mg (based on instrument tolerances, samples that report a cassette mass between −0.03 mg and 0 mg were treated as having a mass of 0 mg, samples with masses below that threshold of −0.03 mg were excluded); 52 samples had Mine IDs that did not report employment for any year from 2005–2019; 31 samples had flow rates outside the acceptable range of 1.615–1.785 L/min; six samples had sampling times of less than 30 minutes; and three samples had invalid Job Codes. This resulted in the final sample size of 46,363 = 46,530 − (75 + 52 + 31 + 6 + 3).

[79] Only valid (non-void) coal respirable dust samples were included in the LIMS dataset. Voided samples include any samples with a documented reason which occurred during the sampling and/or the MSHA's Laboratory analysis for invalidating the results.

were not. Respirable dust samples from coal mines contain the records of the sample type, and the occupation of the miner sampled. A coal sample's type is based on the location within the mine as well as the occupation of the miner sampled. Below is a list of coal sample types and descriptions, as well as the mass of respirable dust required for that type of sample to be analyzed for respirable crystalline silica.

- Type 1—Designated occupation (DO). The occupation on a mechanized mining unit (MMU) that has been determined by results of respirable dust samples to have the greatest respirable dust concentration. Designated occupation samples must contain at least 0.100 mg of respirable dust to be analyzed for respirable crystalline silica.
- Type 2—Other designated occupation (ODO). Occupations other than the DO on an MMU that are also designated for sampling, required by 30 CFR part 70. These samples must contain at least 0.100 mg of respirable dust to be analyzed for respirable crystalline silica.
- Type 3—Designated area (DA). Designated area samples are from specific locations in the mine identified by the operator in the mine ventilation plan under 30 CFR 75.371(t), where samples will be collected to measure respirable dust generation sources in the active workings. These samples must contain at least 0.100 mg of respirable dust to be analyzed for respirable crystalline silica.
- Type 4—Designated work position (DWP). A designated work position in a surface coal mine or surface work area of an underground coal mine designated for sampling to measure respirable dust generation sources in the active workings. Designated work position samples must contain at least 0.200 mg of respirable dust to be analyzed for respirable crystalline silica. There are exceptions for certain occupations: bulldozer operator (MSIS general occupation code 368), high wall drill operator (code 384), high wall drill helper (code 383), blaster/shotfirer (code 307), refuse/backfill truck driver (code 386), or high lift operator/front end loader (code 382). Samples from these occupations must have at least 0.100 mg of respirable dust to be analyzed for respirable crystalline silica.
- Type 5—Part 90 miner. A Part 90 miner is employed at a coal mine and has exercised the option under the old section 203(b) program (36 FR 20601, Oct. 27, 1971) or under 30 CFR 90.3 to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which a miner is exposed is continuously maintained at or below the applicable standard and has not waived these rights. A sample from a Part 90 miner must contain at least 0.100 mg of respirable dust to be analyzed for respirable crystalline silica.
- Type 6—Non-designated area (NDA). Non-designated area samples are taken from locations in the mine that are not identified by the operator in the mine ventilation plan under 30 CFR 75.371(t) as areas where samples will be collected to measure respirable dust generation sources in the active workings. These samples are not analyzed for respirable crystalline silica.
- Type 7—Intake air samples are taken from air that has not yet ventilated the last working place on any split of any working section or any worked-out area, whether pillared or non-pillared, as per 30 CFR 75.301. These samples are not analyzed for respirable crystalline silica.
- Type 8—Non-designated work position (NDWP). A work position in a surface coal mine or a surface work area of an underground coal mine that is sampled during a regular health inspection to measure respirable dust generation sources in the active workings but has not been designated for mandatory sampling. For the analysis of respirable crystalline silica, these samples must have at least 0.200 mg of respirable dust. There are exceptions for certain occupations: bulldozer operator (MSIS general occupation code 368), high wall drill operator (code 384), high wall drill helper (code 383), blaster/shotfirer (code 307), refuse/backfill truck driver (code 386), or high lift operator/front end loader (code 382). Samples taken from these occupations must contain at least 0.100 mg respirable dust to be analyzed for respirable crystalline silica.

Coal Respirable Dust Samples Analyzed for Respirable Crystalline Silica

There were 67,963 samples from coal mines collected by MSHA inspectors from underground and surface coal mining operations that were analyzed for respirable crystalline silica. These results were entered first into LIMS, and then into MSIS and MDRS. Results from MSIS were used as they may be updated by the inspectors at later dates.[80] From those 67,963 samples, 4,836 samples were removed as they were environmental samples, voided in MSIS, or had other errors.[81] This resulted in a dataset of 63,127 samples from coal mines that were analyzed for respirable crystalline silica. Datasets containing the analyzed samples that MSHA removed and retained can be found in the rulemaking docket MSHA–2023–0001.

Coal Respirable Dust Samples Not Analyzed for Respirable Crystalline Silica

Similar to MNM respirable dust samples, the LIMS database includes 45,644 coal samples that did not meet the criteria for analysis and were thus not analyzed for respirable crystalline silica content.[82] After removing 13,243[83] samples that were environmental samples, erroneous, or had voided controls, there were 32,401 samples that were not analyzed for respirable crystalline silica. Datasets containing the unanalyzed samples that MSHA removed and retained can be found in the rulemaking docket MSHA–2023–0001.

All Coal Respirable Dust Samples

In total, 18,079 respirable dust samples from coal mines were removed from the original datasets: 4,836 samples that were analyzed for respirable crystalline silica and 13,243 samples that were not. This created a final dataset of 95,528 samples: 63,127 analyzed samples and 32,401 samples that were not analyzed.[84] A breakdown of respirable dust samples from coal mines is included in Table A–3.

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[80] As mentioned in the section concerning samples for MNM mines, MSIS and MDRS differ from LIMS in that some data fields can be modified or corrected by the inspector. These correctable fields include Mine ID, Location Code, and Job Code.

[81] There were 4,836 samples removed: 4,199 samples were environmental and not personal samples (see Sample Type explanation for more detail); 631 samples had been voided after they had been entered into MSIS; and 6 had invalid Job Codes. This resulted in the final sample size of 63,127 = 67,963 − (4,199 + 631 + 6).

[82] In addition to the criteria listed above, samples from Shop Welders (code 319) are not analyzed for respirable crystalline silica as they are instead analyzed for welding fumes.

[83] There were 13,243 samples removed: 6 samples had typographical errors; 14 samples had a cassette mass less than −0.03 mg (based on instrument tolerances, samples that report a cassette mass between −0.03 mg and 0 mg were treated as having a mass of 0 mg); 92 samples had invalid Job Codes; 12,724 were environmental samples; 44 samples had an occupation code of 000 despite having a personal sample 'Sample Type'; 271 samples had controls that were voided; and 92 came from Job Code 319—Welder (see Footnote 82). This resulted in the final sample size of 32,401 = 50,545 − (6 + 14 + 92 + 12,724 + 44 + 271 + 92).

[84] This dataset did not include any other coal mine respirable dust sample types collected by MSHA inspectors—*i.e.,* sample types 3 (designated area samples), types 6 (Non-face occupations) and 7 (Intake air), samples taken on the surface mine shop welder (n=319), and all voided samples. Voided samples are any samples that have a documented reason which occurred during the sampling and/or laboratory analysis for invalidating the results.

Table A-3: Distribution of Coal Respirable Dust Samples

Sample Type	Number of Samples
Total LIMS Samples Analyzed for Respirable Crystalline Silica Content	*67,963*
Analyzed Samples Removed	4,836
Analyzed Samples Retained	**63,127**
Type 1	10,149
Type 2	42,828
Type 4	4,788
Type 5	365
Type 8	4,997
Total LIMS Samples Not Analyzed for Respirable Crystalline Silica Content	*45,644*
Unanalyzed samples removed	13,243
Unanalyzed samples retained	**32,401**
Total Samples	*113,607*
Total Samples Removed	18,079
Total Samples Retained	**95,528**

Source: MSHA MDRS/MSIS respirable crystalline silica data for the coal industry, August 1, 2016, through July 31, 2021 (version 20220617).

Attachment 1. MNM Samples Analyzed for Cristobalite

Cristobalite is one of the three polymorphs of respirable crystalline silica analyzed by MSHA's Laboratory upon request that is included in this proposed rule. At the request of the inspector, MNM[85] respirable dust samples that contain at least 0.050 mg of respirable dust are analyzed for cristobalite. Of the 57,769 retained MNM samples that contained at least 0.050 mg of respirable dust, 0.6 percent (or 359 samples) were analyzed for cristobalite. Coal respirable dust samples are not analyzed for cristobalite.[86]

Table A1-1: MNM Respirable Dust Samples Analyzed for Cristobalite

Description	Number of Samples	Percent of Samples
Samples with mass ≥ 0.100 mg	57,769	
Samples analyzed for Cristobalite	359	0.6%
Samples not analyzed for Cristobalite	57,410	99.4%

Sources: MSHA MDRS/MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220615); MSHA Personal Health Samples Public Dataset.

While the samples that were analyzed for cristobalite were assigned to all four contaminant codes seen in this dataset, the majority were assigned contaminant code 523.

[85] See Attachment 2. Technical Background about Measuring Respirable Crystalline Silica, for more information.

[86] See Attachment 2. Technical Background about Measuring Respirable Crystalline Silica, for more information.

Table A1-2: Distribution of MNM Respirable Dust Samples Analyzed for Cristobalite, by Contaminant Code

Code	Contaminant	Number of Samples	Percent of Samples
	Total Samples Analyzed for Cristobalite	**359**	
523	Dust respirable fraction, ≥ 1% quartz	215	59.9%
525	Containing cristobalite	6	1.7%
121	Nuisance dust, listed, respirable fraction, <1% silica	32	8.9%
131	Unlisted dust, respirable fraction, <1% silica	106	29.5%

Sources: MSHA MDRS/MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220615); MSHA Personal Health Samples Public Dataset.

The distribution of the 359 samples by cristobalite mass can be seen in Table A1–3.[87]

Table A1-3: Distribution of Analyzed Samples by Cristobalite Mass

Cristobalite Mass (µg)	Number of Samples	Percent of Samples
5	334	93.1%
11-20	14	3.9%
21-30	7	1.9%
31-40	3	0.8%
> 40	1	0.3%
Total	**359**	**100%**

Sources: MSHA MDRS/MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220615); MSHA Personal Health Samples Public Dataset.

The mass of each sample was then used to calculate a cristobalite concentration by dividing the mass of cristobalite by the volume of air sampled (0.816 m^3). The calculated concentrations ranged from 6 µg/m^3 to 53 µg/m^3.[88]

Table A1-4: Samples Analyzed for Cristobalite by Concentration (µg/m^3)

Cristobalite Concentration (µg/m^3)	Number of Samples	Percent of Samples
6	334	93.1%
12-20	12	3.3%
21-30	5	1.4%
31-40	5	1.4%
41-50	2	0.6%
> 50	1	0.3%
Total	**359**	**100%**

Sources: MSHA MDRS/MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220615); MSHA Personal Health Samples Public Dataset.

[87] Of the 369 samples that were analyzed for cristobalite, 334 had a value for cristobalite mass that was less than the limit of detection (LOD) for cristobalite, 10 µg. As such these samples were assigned a value of 5 µg of cristobalite, one half the LOD. See Attachment 2. Technical Background about Measuring Respirable Crystalline Silica, for more information.

[88] One sample had a cristobalite concentration of 53 µg/m^3. It was sampled in July of 2011 at Mine ID 4405407 and cassette number 610892. The commodity being mined was Stone: Crushed, Broken Quartzite. The occupation of the miner being sampled was Miners in Other Occupations: Job Code 513—Building and Maintenance.

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Attachment 2. Technical Background About Measuring Respirable Crystalline Silica

In the proposed rule, respirable crystalline silica refers to three polymorphs: quartz, cristobalite, and tridymite. MSHA's Laboratory uses two methods to analyze respirable crystalline silica content in mine respirable dust samples. The first method, X-ray diffraction (XRD), separately analyzes quartz, cristobalite, and tridymite contents in respirable dust samples that mine inspectors obtain at MNM mine sites (MSHA Method P–2, 2018a). The second method, Fourier transform infrared spectroscopy (FTIR), is used to analyze quartz in respirable dust samples obtained at coal mines (MSHA Method P–7, 2018b and 2020). Although the XRD method can be expanded from MNM to coal dust samples, MSHA chooses to use the FTIR method for coal dust samples because it is a faster and less expensive method. However, the current MSHA P–7 FTIR method cannot quantify quartz if cristobalite and/or tridymite are present in the sample. The method also corrects the quartz result for the presence of kaolinite, an interfering mineral for quartz analysis in coal dust.

Limits of Detection and Limits of Quantification for Silica Sample Data

The Limits of Detection (LOD) and Limits of Quantification (LOQ) are the two terms used to describe the method capability. The LOD refers to the smallest amount of the target analyte (respirable crystalline silica) that can be detected in the sample and distinguished from zero with an acceptable confidence level that the analyte is actually present. It can also be described as the instrument signal that is needed to report with a specified confidence that the analyte is present. The LOQ refers to the smallest amount of the target analyte that can be repeatedly and accurately quantified in the sample with a specified precision. The LOQ is higher than the LOD. The values of the LOD and LOQ are specific to MSHA's Laboratory as well as the instrumentation and analytical method used to perform the analysis. These values do not change from one batch to another when samples are analyzed on the same equipment using the same method. However, their levels may change over time due to updated analytical methods and technological advances. The values of the LOD and LOQ for the methods (XRD and FTIR) used in analyzing respirable crystalline silica samples are explained in MSHA documents for MNM samples and coal samples (MSHA Method P–2, 2018a; MSHA Method P–7, 2018b and 2020). MSHA periodically updates these values to reflect progress in its analytical methods. The values of LOD and LOQ were last updated in 2022 for MNM samples and in 2020 for coal samples.

The values of LODs and LOQs for respirable crystalline silica in samples from MSHA inspectors depend on several factors, including the analytical method used (XRD or FTIR) and the silica polymorph analyzed (quartz, cristobalite, or tridymite), as presented in Table A2–1.

For a sample with respirable crystalline silica content less than the method LOD, the maximum concentration is calculated as the respirable crystalline silica mass equivalent to LOD divided by the volume of air sampled. For example, if no quartz is detected by XRD analysis for an MNM sample, the method LOD is 5 μg. If that sample is collected at 1.7 L/min air flow rate for 480 minutes (*i.e.,* 8 hours), the air sample volume would be 816 L (= 1.7 L/min * 480 minutes), or 0.816 m^3. The calculated maximum concentration associated with a sample having respirable crystalline silica mass below the method LOD would be 6 μg/m^3 (= 5 μg/0.816 m^3). The ''half maximum concentration'' is the midpoint between 0 and the calculated maximum respirable crystalline silica concentration, which is 3 μg/m^3 (= ½ * 6 μg/m^3) in this example.

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Table A2-1: Calculated Maximum Concentration for Samples Below LOD, by Analytical Method and Respirable Crystalline Silica Polymorph

Sample Dates	MSHA Analytical Method (Method Name[A])	Respirable Crystalline Silica Analysis Type (polymorph)	Air Volume for Sample (flow rate)	Limit of Quantification (µg per filter)	Limit of Detection (µg per filter)	Calculated Maximum Concentration ("Half maximum concentration)
MNM Mines						
01/01/2005 - 12/31/2019	XRD (P-2-2018)	Quartz	816 L=0.816 m^3 in 8 hours (1.7 L/min)	20 µg	5 µg	6 µg/m^3 (half = 3 µg/m^3)
01/01/2005 - 12/31/2019	XRD (P-2-2018)	Cristobalite	816 L=0.816 m^3 in 8 hours (1.7 L/min)	40 µg	10 µg	12 µg/m^3 (half = 6 µg/m^3)
Coal Mines						
08/01/2016 - 08/31/2020	FTIR (P-7-2018)	Quartz	*X* L= Sampling time (min) x 2.0 L/min / 1000 m^3	20 µg	4 µg	Value is variable based on sampling time (min)
09/01/2020 - 07/31/2021	FTIR (P-7-2020)	Quartz	*X* L= Sampling time (min) x 2.0 L/min / 1000 m^3	12 µg	3 µg	

Notes:

(A)Samples in the designated sampling years are collected and analyzed using the corresponding analytical methods. The values of LOQ and LOD are determined by the analytical method, polymorph, and air volume for each sample. The analytical methods used are P-2-2018 for MNM, and P-7-2018 or P-7-2020 for coal, respectively. For example, method P-2-2018 is used in measuring both quartz and cristobalite for MNM samples taken from January 1, 2015, to December 31, 2019. The values of LOQ are different for quartz and cristobalite in MNM samples. MSHA updated its methods for coal in 2020 (Method P-7-2020) and MNM in 2022 (method P-2-2022).

(B)As of the 2018 SOP the LOQ for cristobalite was 40 µg based on the instrumentation and software in use at the time. The current LOQ as updated in the 2022 SOP is 20 µg, as based on the instrumentation and software currently in use.

The air volume is treated differently for MNM and coal samples under the existing standards. In the case of MNM samples, 8-hour equivalent time weighted averages (TWAs) are calculated using 480 minutes (8 hours) and a flow rate of 1.7 L/min, even if samples are collected for a longer duration. In contrast, coal TWAs are calculated using the full duration of the shift and a flow rate of 2.0 L/min and converted to an MRE equivalent concentration under existing standards.

Assumptions for Analyzed Samples

Samples from MNM mines that contain at least 0.100 mg of dust mass are analyzed for the presence of quartz and/or cristobalite. For samples from coal mines, the minimum amount of respirable dust in a sample to be analyzed for respirable crystalline silica is determined by sample type and the occupation of the miner sampled. For Sample Types 1, 2, and 5, the sample must contain at least 0.100 mg of respirable dust. For Sample Types 4 and 8, the sample must contain at least 0.200 mg of respirable dust unless it comes from one of the following occupations: bulldozer operator (MSIS general occupation code 368), high wall drill operator (code 384), high wall drill helper (code 383), blaster/shotfirer (code 307), refuse/backfill truck driver (code 386), and high lift operator/front end loader (code 382). Samples taken from these occupations must contain at least 0.100 mg respirable dust to be analyzed for respirable crystalline silica. Samples from Shop Welders (code 319) are never analyzed for quartz, as they instead are sent for welding fume analysis.

MSHA makes separate assumptions based on the mass of respirable crystalline silica for a sample, whether it is above or below the method LOD. For all samples reporting a mass of respirable crystalline silica greater or equal to the method LOD, MSHA used the reported values to calculate the respirable crystalline silica concentration for the sample. For samples with values below the method LOD, including samples reported as containing 0 µg of silica, MSHA used ½ of the LOD to calculate the respirable crystalline silica concentration of the sample. MSHA understands that its assumptions regarding samples with respirable crystalline silica mass below the method LOD will have a minimal impact on the assessment.[89]

[89] In its Final Regulatory Economic Analysis (FREA) for its 2016 silica rule, OSHA observed: ". . . that XRD analysis of quartz from samples prepared from reference materials can achieve LODs and LOQs between 5 and 10 µg was not disputed in the [rulemaking] record." (OSHA, 2016).

Table A2-2: MSHA's Assumptions of Values Used to Calculate Concentration of Quartz and Cristobalite

Measured Mass	Value Used to Calculate RCS Concentration
Quartz	
≥LOQ	Measured Value
≥LOD and <LOQ	Measured Value
>0 μg/m^3 and <LOD	½ LOD
0 μg/m^3	½ LOD
Cristobalite	
≥LOQ	Measured Value
≥LOD and <LOQ	Measured Value
>0 μg/m^3 and <LOD	½ LOD
0 μg/m^3	½ LOD

Source: MSHA.

The reported value of respirable crystalline silica mass from an MNM or coal sample can fall under one of the four groups: (1) at or above the method LOQ, (2) at or above the method LOD but below the LOQ, (3) greater than 0 μg but less than the method LOD, or (4) equal to 0 μg. MSHA treats these samples differently based on their respirable crystalline silica mass.

Quartz Mass at or Above the Method LOQ

For MNM and coal samples reporting quartz mass at or above the method LOQs, MSHA uses the values reported by the MSHA's Laboratory.

Quartz Mass Between Method LOD and LOQ

For MNM and coal samples reporting quartz mass at or above the method LOD but below the LOQ, MSHA uses the values reported by the MSHA's Laboratory.

Quartz Mass Between the Method LOD and 0 μg

A review of respirable crystalline silica samples in LIMS reveals that some samples had a respirable crystalline silica mass below the LOD of the analytical methods but greater than 0 μg. Values in this range (*i.e.,* below the method LOD but greater than 0 μg) cannot reliably indicate the presence of respirable crystalline silica. The mass of silica in these is too small to reliably detect, but the concentration of silica could be up to the calculated maximum concentration based on the method LOD. For example, consider a sample from an MNM mine that was analyzed for quartz and had a reported quartz mass of 4 μg. This falls below the LOD of 5 μg but above 0 μg, and as such the sample could actually contain anywhere from 0 μg of quartz up to the LOD value of 5 μg of quartz.

In these cases, MSHA used ½ the LOD value to calculate respirable crystalline silica concentration. MSHA explored other options to treat these samples such as treating the reported silica mass as 0 μg/m^3 (lower bound) as well as assuming the sample silica mass is just below the LOD and assigning each sample a value of the method LOD (upper bound). The use of the ½ LOD value is considered a reasonable assumption since using either the lower bound of 0 μg/m^3 or the upper bound of the associated method's LOD could under or overestimate exposures, respectively. The assumption is not expected to impact the assessment of silica concentration because any sample results with respirable crystalline silica mass below the method LODs (between 3–10 μg/m^3) would also have been well below the lowest exposure profile range (<25 μg/m^3).

Quartz Mass of 0 μg

A portion of the MNM and coal samples below the LOD are listed as having respirable crystalline silica (specifically quartz) mass levels of 0 μg. For these samples, instead of treating the mass of silica in the sample as a true zero, MSHA replaced the value with ½ the LOD of the associated method. Although the respirable crystalline silica mass of these samples is less than the LOD, it is likely that the sample still contains a small amount of respirable crystalline silica. Hence, MSHA assumes a value of ½ LOD in its calculation of respirable crystalline silica concentration for these samples. This assumption is considered to be reasonable because using the lower bound of 0 μg/m^3 for these samples could underestimate the respirable crystalline silica concentration while using the upper bound of method LODs could overestimate the respirable crystalline silica concentration.

Table A2–3 presents an example for quartz, one of the respirable crystalline silica polymorphs. This table shows the LOD of quartz mass and the possible range of quartz concentrations for samples reporting a quartz mass of 0 μg. These adjusted concentrations are expected to have a limited impact of the assessment of respirable crystalline silica concentration, as supported by MSHA's sensitivity analyses.

Table A2-3: Recast Concentration of Samples with 0 μg/m³ Quartz

Sample Dates	Quartz Mass LOD (Value Less than LOD listed)	Range of Concentrations (μg/m³)	Recast Concentration
MNM			
01/01/2005 - 12/31/2019	5 μg (0 μg)	0 μg/m³	Recast using ½ LOD
01/01/2005 - 12/31/2019	5 μg (1 to <5 μg)	1 to <6 μg/m³	Recast using ½ LOD
Coal			
08/01/2016 - 08/31/2020	3 μg (0 μg)	0 μg/m³	Recast using ½ LOD
08/01/2016 - 08/31/2020	3 μg (1 to <3 μg)	1 to 2 μg/m³	Recast using ½ LOD
09/01/2020 - 07/31/2021	3 μg (0 μg)	0 μg/m³	Recast using ½ LOD
09/01/2020 - 07/31/2021	3 μg (1 to <3 μg)	1 to 2 μg/m³	Recast using ½ LOD

Sources: MSHA MDRS/MSIS respirable crystalline silica database January 1, 2005, through December 31, 2019, for MNM, August 1, 2016 - July 31, 2021, for Coal.

Cristobalite Measurement

Respirable dust samples from MNM mines are rarely analyzed for cristobalite by MSHA, and respirable coal dust samples are not analyzed for the presence of cristobalite. MNM samples are analyzed for the presence of cristobalite only when requested by MSHA inspectors because the geological or work conditions indicate this specific polymorph may be present. The LIMS database includes samples for which cristobalite was analyzed, either with or without quartz analysis. MSHA uses similar assumptions for cristobalite and quartz.

The cristobalite LOD for these samples is 10 μg. The MSHA Laboratory-reported values are used for analyzed dust samples with cristobalite mass values equal to or above the method LODs. Samples that were analyzed for cristobalite and had a cristobalite mass value below the method LOD were assigned values of ½ LOD, or 5 μg. For example, 267 samples, or 74.4 percent of the 359 samples that were analyzed for cristobalite, reported a value of 0 μg of cristobalite; these were assigned a value of 5 μg.

When a sample is analyzed for two polymorphs (*i.e.,* both quartz and cristobalite), detectable quartz and cristobalite are summed to generate the total respirable crystalline silica. If only one of these polymorphs is detected, the sample concentration is based on the detected polymorph. If the concentrations of both polymorphs (quartz and cristobalite) are reported as 0 μg/m³, ½ mass LOD is assumed in calculating the concentrations and the resulting concentrations are summed.

Unanalyzed Samples

There are also samples whose dust mass fell below their associated mass threshold, and as such, they were not analyzed for the presence of quartz and/or cristobalite. The respirable dust mass for a sample was considered to be 0 μg when the net mass gain of dust was 0 μg or less.

References

MSHA. 2018. P–2: X-Ray Diffraction Determination of Quartz and Cristobalite in Respirable Metal/Nonmetal Mine Dust.

MSHA. 2018a. P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust.

MSHA. 2020. P–7: Determination of Quartz in Respirable Coal Mine Dust by Fourier Transform Infrared Spectroscopy.

OSHA, 2016. Final Regulatory Economic Analysis (FEA) for OSHA's Final Rule on Respirable Crystalline Silica, Chapter IV.3.2.3—Sensitivity of Sampling and Analytical Methods.

Appendix B

Mining Commodity Groups

For this rulemaking analysis, the mining industries are grouped into six commodities—Coal, Metal, Nonmetal, Stone, Crushed Limestone, and Sand and Gravel. The table below shows the six commodity groupings based on the Standard Industrial Classification (SIC) codes and the North American Industry Classification System (NAICS) codes. The SIC system is a predecessor of NAICS using industry titles to standardize industry classification. The NAICS is widely used by Federal statistical agencies, including the Small Business Administration (SBA), for classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

SIC Industry Titles and NAICS Codes in Mining Industries

Mining Commodity Group	SIC Code Industry Title	2022 NAICS Code	2022 NAICS Industry
Nonmetal	Oil Shale, Oil Sand, Oil Mining	211120	Crude Petroleum and Natural Gas Extraction
Nonmetal	Natural Gas	211130	Natural Gas Extraction
Coal	Bituminous Coal, Lignite, and Anthracite Coal	212114	Surface Coal Mining
Coal	Bituminous and Anthracite Coal	212115	Underground Coal Mining
Metal	Iron Ore, Magnetite	212210	Iron Ore Mining
Metal	Gold Ore, Silver Ore	212220	Gold Ore and Silver Ore Mining
Metal	Copper Ore NEC, Nickel, Lead-Zinc Ore, Zinc	212230	Copper, Nickel, Lead, and Zinc Mining (partial: Copper and Nickel only)
Metal	Chromite Chromium Ore, Cobalt Ore, Columbium Tantalum Ore, Manganese Ore, Molybdenum Ore, Tungsten Ore, Miscellaneous Metal Ore NEC, Aluminum Ore-Bauxite, Antimony Ore, Beryl-Beryllium Ore, Mercury Ore, Platinum Group Ore, Rare Earths Ore, Tin Ore, Titanium Ore, Zirconium Ore, Uranium-Vanadium Ore, Uranium Ore, Vanadium Ore	212290	Other Metal Ore Mining
Stone	Dimension Stone NEC, Dimension Granite, Dimension Limestone, Dimension Marble, Dimension Sandstone, Dimension Slate, Dimension Traprock, Dimension Basalt, Dimension Mica, Dimension Quartzite	212311	Dimension Stone Mining and Quarrying
Crushed Limestone	Crushed, Broken Limestone NEC	212312	Crushed and Broken Limestone Mining and Quarrying
Stone	Crushed, Broken Granite	212313	Crushed and Broken Granite Mining and Quarrying
Stone	Crushed, Broken Stone NEC; Crushed, Broken Marble; Crushed, Broken Sandstone; Crushed, Broken Slate; Crushed, Broken Traprock; Crushed, Broken Basalt; Crushed, Broken Mica; Crushed, Broken Quartzite	212319	Other Crushed and Broken Stone Mining and Quarrying
Sand and Gravel	Construction Sand and Gravel, Common Sand	212321	Construction Sand and Gravel Mining
Sand and Gravel	Industrial Sand NEC, Ground Silica, Ground Cristobalite, Ground Quartz	212322	Industrial Sand Mining
Nonmetal	Kaolin and Ball Clay, Clay, Ceramic, and Refractory Minerals, Aplite, Bentonite, Brucite, Common Clays NEC, Feldspar, Fire Clay, Fullers Earth, Kyanite, Magnesite, Common Shale	212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining
Nonmetal	Miscellaneous Nonmetallic Mineral NEC, Asbestos, Cryolite, Diatomaceous Earth (Diatomite), Gilsonite, Graphite, Gypsum, Leonardite, Mica, Perlite, Pumice, Pyrophyllite, Shell, Crushed Dimension Soapstone, Talc, Tripoli, Vermiculite, Zeolites, Wollastonite, Gemstones, Agate, Amethyst, Emerald, Garnet, Olivine, Crystal Quartz, Sapphire, Turquoise, Potash, Soda, and Borate Minerals NEC, Boron Minerals, Potash, Sodium Compounds, Trona, Potassium Compounds, Phosphate Rock, Colloidal Phosphates, Chemical and Fertilizer Mineral NEC, Barite Barium Ore, Fluorspar, Lithium Minerals, Pigment Minerals, Pyrites, Salt, Sulfur, Brine Evaporated Salt	212390	All Other Nonmetallic Mineral Mining
Stone	Cement	327310	Cement Manufacturing
Stone	Lime	327410	Agricultural Lime Manufacturing
Metal	Alumina	331313	Alumina Refining and Primary Aluminum Production

Appendix C

Occupational Categories for Respirable Crystalline Silica Sample Collection

This Appendix explains how MSHA categorized MNM and coal samples in constructing respirable crystalline silica exposure profile tables for the current rulemaking. MSHA has developed respirable crystalline silica exposure profile tables using its inspectors' sampling data and results. One set of exposure profile tables displays the analysis of 15 years of respirable crystalline silica sampling data from MNM mines (Attachment 1), and the other set displays the analysis of 5 years of respirable crystalline silica samples collected at coal mines (Attachment 2).[90] In the MNM tables, the respirable crystalline silica concentration information is broken out by 5 commodities (*e.g.,* ''Metal,'' ''Crushed Limestone,'' etc.) and then by 11 occupational categories (*e.g.,* ''Drillers,'' ''Stone Cutting Operators,'' etc.). The data for coal mining is disaggregated by 2 locations (''Underground'' and ''Surface'') and then by 9 occupational categories (*e.g.,* ''Crusher Operators,'' ''Continuous Mining Machine Operators,'' etc.).

Job Codes and Respirable Dust Sampling

MSHA inspectors use job codes to label samples of respirable dust when they conduct health inspections.[91] Following the sampling strategy outlined in the most recent

[90] For coal mines, the analysis is based on samples collected by inspectors beginning on August 1, 2016, when Phase III of MSHA's 2014 RCMD standard went into effect. Samples taken prior to implementation of the RCMD standard would not be representative of current respirable crystalline silica exposure levels in coal mines.

[91] The job codes have been referred to as both job codes and occupation codes by MSHA. For example, in the Mine Data Retrieval System, they are called job codes; in other materials, including MSHA's Inspection Application System (IAS), they are called occupational codes. For the purposes of this document, the term job code has been used to clearly differentiate the job codes from the occupational categories.

MSHA Health Inspection Procedures Handbook (December 2020; PH20–V–4), the inspectors determine potential airborne hazards to which miners may be exposed, including respirable dust, and then take samples from the appropriate miners or working areas at a mine. Using gravimetric samplers, the inspectors collect respirable dust samples at MNM and coal mines. When submitting the collected samples to MSHA's Laboratory for analysis, the inspectors label their samples with the three-digit job code that best describes the duties that each miner was performing during the sampling period.

The three-digit job codes are taken from MSHA's Inspection Application System (IAS), which includes 220 job codes for coal mines and 121 job codes for MNM mines. Attachments 3 and 4 include the IAS job codes for coal and MNM operations, respectively.

Coal Job Codes: The coal job codes have generally been consistent over time, with new codes added when needed. For example, IAS has the same job code for the duties of a coal ''supervisor/foreman'' as two predecessor documents—the ''Job Code Pocket Cards'' for coal mining, used by MSHA's predecessor, the Mining Enforcement and Safety Administration (MESA) (see Attachment 5), and a Fall 1983 Mine Safety and Health publication. An example is presented below in Table C–1. In the three-digit coal job code, the first digit generally identifies where the work is taking place in the mine: 0 (Underground Section Workers—Face); 1 (General Underground—Non-Face); 2 (Underground Transportation—Non-Face); 3 (Surface); 4 (Supervisory and Staff); 5 (MSHA—State); and 6 (Shaft and Slope Sinking). The coal codes starting with 6 were added in 2020 to better delineate the samples for miners conducting shaft and slope sinking activities.

Table C-1: Example of Consistent Coal Job Classifications - Occupations Classified as "Supervisor/Foreman."

Occupation / Activity	MESA Pocket Card	1983 Publication[1]	2022 IAS
	Job Code	Job Code	Job Code
Section Foreman	049	049	049
Bullgang Foreman/Labor Foreman	149	149	149
Maintenance Foreman	418	418	418
Assist Mine Foreman/Assist Mine Manager	430	430	430
Mine Foreman/Mine Manager	449	449	449
Fire Boss Pre-Shift Examiner	462	462	462
Superintendent	481	481	481
Outside Foreman	489	489	489
Preparation Plant Foreman	494	494	494

1 Fall 1983 Mine Safety and Health publication (page 6).

MNM Job Codes: Many of the 121 MNM job codes are similar to the coal job codes, as noted in Attachment 4. One major difference is that unlike the coal job codes, MNM job codes are not based on the location of the work/job. The first digit of the three-digit MNM job code does not indicate whether a job is located at an underground or surface area of the mine. For example, a ''MNM Diamond Drill Operator'' (Job Code 034) could be working on the surface or underground, whereas a ''Coal Drill Operator'' would have a different job code based on the miner's location within a mine (Job Code 034—underground at the face; Job Code 334—at the surface).

Occupational Categories for the Respirable Crystalline Silica Rulemaking

Some of the original work to group the MNM job codes into occupational categories was completed in 2010 in support of earlier rulemaking efforts. The MNM occupational categories were developed first and were later updated with additional sampling data as it became available. The coal occupational categories were developed several years later and were generally modeled after the MNM tables; however, coal occupational categories are first divided based on surface and underground locations because occupational activities at different locations of a mine can have differing impacts on coal miners' exposures to respirable crystalline silica. In 2020, MSHA's Laboratory used 9 coal and 14 MNM occupational categories for its respirable crystalline silica data analyses.

For the respirable crystalline silica exposure profile tables in the proposed respirable crystalline silica rule, MSHA made no change to the 9 coal occupational categories, but condensed the 14 MNM occupational categories to 11. These occupational categories are meant to reasonably group multiple job codes with similar occupational activities/tasks and engineering controls. The grouping of job codes into occupational categories purposely focused on the occupational activities/tasks and exposure risk of the miner performing a particular job rather than the type of mining equipment utilized by the miner. The creation of occupational categories based on the types of equipment utilized by miners would have failed to accurately characterize the risk of individual miners.

Coal Occupational Categories

There are 220 job codes for coal miners in IAS.[92] Overall, 209 job codes are included in the 9 occupational categories. Some job codes were excluded, primarily because sampling data were not available for those job codes. The codes that have been excluded are:

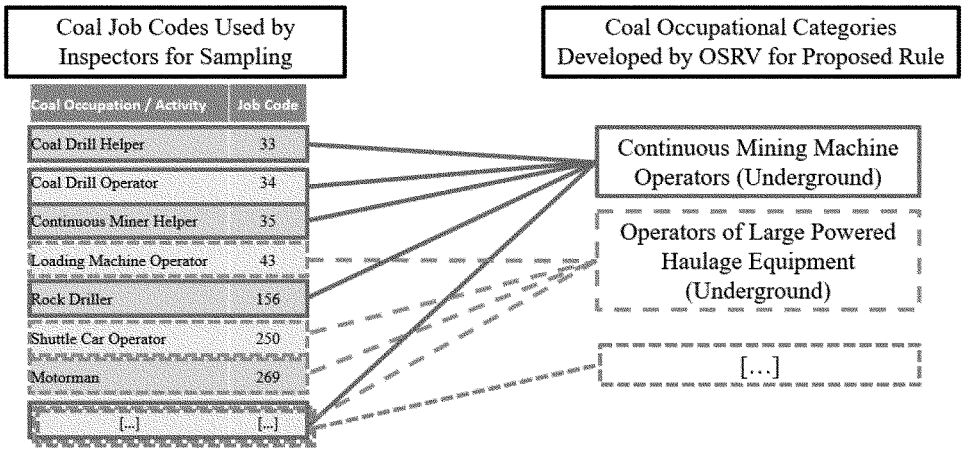
- Job code 0 ''Area,'' because area samples are not specific to any one occupation.
- Job code 398 ''Groundman,'' because there were no sample data for this code in the respirable crystalline silica sampling dataset.
- Job codes 590 ''Education Specialist,'' 591 ''Mineral Industrial Safety Officer,'' 592 ''Mine Safety Instructor,'' and 594 ''Training Specialist,'' because there were no coal respirable crystalline silica (quartz) data for these codes for the timeframe selected.
- Job codes 602 ''Electrician,'' 604 ''Mechanic,'' 609 ''Supply Person,'' 632 ''Ventilation Worker,'' and 635 ''Continuous Miner Operator Helper,'' because there were no sample data for these codes in the respirable crystalline silica sampling dataset.

The remaining 209 coal job codes are first divided by the job location—underground or surface—because potential respirable crystalline silica exposures at coal mines can vary depending on where a miner works at a given mine. (Three job codes are used in

[92] IAS also contains 272 coal job codes that are used to fill out a Mine Accident, Injury and Illness Report (MSHA Form 7000–1). These codes were not included in the respirable crystalline silica exposure profile tables and are not discussed further in this document.

both underground and surface locations: job codes 402 ''Master Electrician,'' 404 ''Master Mechanic,'' and 497 ''Clerk/Timekeeper.'') The underground and surface job codes are further grouped on the basis of the types of tasks and typical engineering controls. For example, as shown in Figure 1, the underground ''Continuous Mining Machine Operators'' occupational category includes 14 different occupations that involve drilling activities—occupations such as ''Coal Drill Helper,'' ''Coal Drill Operator,'' and ''Rock Driller.'' The underground ''Operators of Large Powered Haulage Equipment'' occupational category has 12 similar occupations including ''Loading Machine Operator,'' ''Shuttle Car Operator,'' and ''Motorman.''

Figure C-1: Examples of the Grouping of Coal Job Codes into Coal Occupational Categories



There are five categories of underground occupations and four categories of surface occupations.

The five underground occupational categories include:

(1) Continuous Mining Machine Operators (*e.g.,* Coal Drill Helper and Coal Drill Operator);

(2) Operators of Large Powered Haulage Equipment (*e.g.,* Shuttle Car, Tractor, Scoop Car);

(3) Longwall Workers (*e.g.,* Headgate Operator and Jack Setter (Longwall));

(4) Roof Bolters (*e.g.,* Roof Bolter and Roof Bolter Helper); and

(5) Underground Miners (*e.g.,* Electrician, Mechanic, Belt Man/Conveyor Man, and Laborer, etc.).

The four surface occupational categories include:

(1) Drillers (*e.g.,* Coal Drill Operator, Coal Drill Helper, and Auger Operator);

(2) Operators of Large Powered Haulage Equipment (*e.g.,* Backhoe, Forklift, and Shuttle Car);

(3) Crusher Operators (*e.g.,* Crusher Attendant, Washer Operator, and Scalper-Screen Operator); and

(4) Mobile Workers (*e.g.,* Electrician, Mechanic, Blaster, Cleanup Man, Mine Foreman, etc.).

Attachments 1 and 3 provide the full lists of occupational categories and coal job codes.

MNM Occupational Categories

From the 121 MNM job codes in IAS, 120 job codes are included in the occupational categories and 1 job code is excluded. The code that has been excluded is:

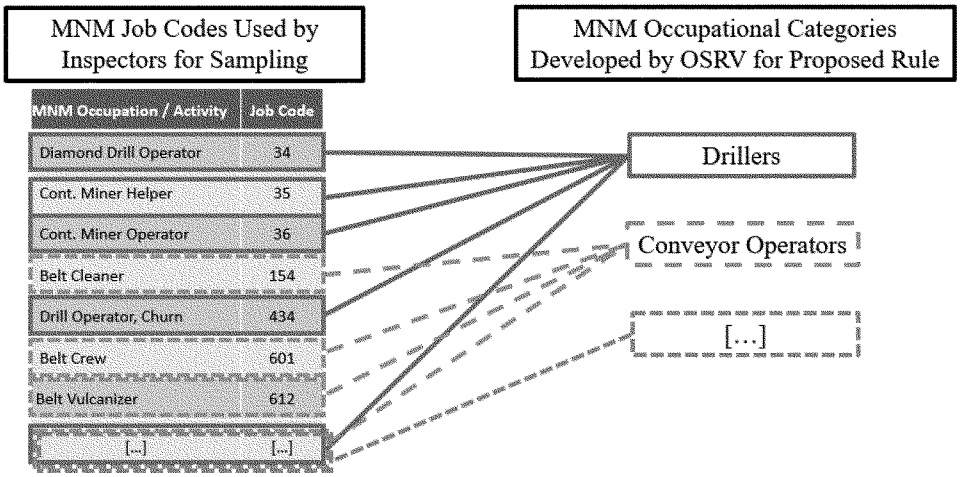
- Job code 413 ''Janitor,'' because there were no sample data for this code in the respirable crystalline silica sampling dataset.

Of the 120 job codes included, 1 job code was listed in both the ''Crushing Equipment and Plant Operators'' occupational category and the ''Kiln, Mill and Concentrator Workers'' category. The code that was used twice is:

- Job Code 388 ''Screen/Scalper Operators,'' because MNM job codes do not indicate the location where the work is taking place and this work can be conducted either in a plant or on the surface of the mine.

The final 121 MNM job codes (with job code 388 included twice) were first grouped into 14 occupational categories based on the types of tasks and typical engineering controls used. For example, as seen in Figure 2, the ''Drillers'' occupational category includes the 20 different occupations that involve drilling activities, such as ''Diamond Drill Operator,'' ''Drill Operator Churn,'' and ''Continuous Miner Operator.'' ''Belt Cleaner,'' ''Belt Crew,'' and ''Belt Vulcanizer'' are included in the occupational category, ''Conveyor Operators.'' Similar tasks were grouped together because the work activities and respirable crystalline silica exposures were anticipated to be comparable.

Figure C-2: Examples of the Grouping of MNM Job Codes into MNM Occupational Categories



The 14 occupational categories were:

(1) Bagging Machines;
(2) Stone Saws;
(3) Stone Trimmers, Splitters;
(4) Truck Loading Stations;
(5) Mobile Workers (*e.g.,* Laborers, Electricians, Mechanics, and Supervisors);
(6) Conveyors;
(7) Crushers;
(8) Dry Screening Plants;
(9) Kilns/Dryers, Rotary Mills, Ball Mills, and Flotation/Concentrators;
(10) Large Powered Haulage Equipment (*e.g.,* Trucks, FELs, Bulldozers, and Scalers);
(11) Small Powered Haulage Equipment (*e.g.,* Bobcats and Forklifts);
(12) Jackhammers;
(13) Drills; and
(14) Other Occupations.

After additional consideration, it was determined that the original 14 categories could be further condensed into the final 11 categories since some of the occupational categories contained job codes where the types of tasks and engineering and administrative controls were similar enough to be combined.

The final 11 occupational categories include:

(1) Drillers (*e.g.,* Diamond Drill Operator, Wagon Drill Operator, and Drill Helper);
(2) Stone Cutting Operators (*e.g.,* Jackhammer Operator, Cutting Machine Operator, and Cutting Machine Helper);
(3) Operators of Large Powered Haulage Equipment (*e.g.,* Trucks, Bulldozers, and Scalers);
(4) Conveyor Operators (*e.g.,* Belt Cleaner, Belt Crew, and Belt Vulcanizer);
(5) Crushing Equipment and Plant Operators (Crusher Operator/Worker, Scalper Screen Operator, and Dry Screen Plant Operator);
(6) Kiln, Mill, and Concentrator Workers (*e.g.,* Ball Mill Operator, Leaching Operator, and Pelletizer Operator);
(7) Operators of Small Powered Haulage Equipment (*e.g.,* Bobcats, Shuttle Car, and Forklifts);
(8) Packaging Equipment Operators (*e.g.,* Bagging Operator and Packaging Operations Worker);
(9) Truck Loading Station Tenders (*e.g.,* Dump Operator and Truck Loader);
(10) Mobile Workers (Laborers, Electricians, Mechanics, and Supervisors, etc.); and
(11) Miners in Other Occupations (Welder, Dragline Operator, Shotcrete/Gunite Man, and Dredge/Barge Operator, etc.).

The sampling data for each of the 11 occupational categories were then summarized by commodity group (''Metal,'' ''Nonmetal,'' ''Stone,'' ''Crushed Limestone,'' and ''Sand and Gravel'') based on the material being extracted.[93] The available sampling data were then collated for each occupation and commodity and summarized by concentration ranges in the exposure profile tables for MNM mines.

Attachment 1: Tables for MNM

[93] Crushed Limestone and Sand and Gravel were considered separately because these commodities make up a large percentage of inspection samples.

Watts *et al.* (2012). Respirable crystalline silica [Quartz] Concentration Trends in Metal and Nonmetal Mining, J Occ Environ Hyg 9:12, 720–732.

Table C1-1: Summary of Respirable Crystalline Silica in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	ISO Concentration, µg/m³		
			Mean (µg/m³)	Median (µg/m³)	Max (µg/m³)
Metal	Drillers	352	31.0	16.0	549
	Stone Cutting Operators	10	92.0	81.5	195
	Operators of Large Powered Haulage Equipment	673	28.5	17.0	426
	Conveyor Operators	29	57.4	29.0	382
	Crushing Equipment and Plant Operators	628	79.3	50.0	1,263
	Kiln, Mill, and Concentrator Workers	467	35.4	20.0	588
	Operators of Small Powered Haulage Equipment	38	104.4	7.0	3,361
	Packaging Equipment Operators	88	36.4	9.0	371
	Truck Loading Station Tenders	21	31.2	15.0	179
	Mobile Workers	1,004	52.0	26.0	3,588
	Miners in Other Occupations	189	67.5	25.0	1,690
	Metal OVERALL (All Occupations)	**3,499**	**49.1**	**25.0**	**3,588**
Nonmetal	Drillers	194	22.0	6.0	353
	Stone Cutting Operators	81	39.1	7.0	566
	Operators of Large Powered Haulage Equipment	922	16.9	7.0	449
	Conveyor Operators	31	10.2	6.0	37
	Crushing Equipment and Plant Operators	586	27.8	13.0	613
	Kiln, Mill, and Concentrator Workers	423	24.0	13.0	384
	Operators of Small Powered Haulage Equipment	237	25.4	10.0	190
	Packaging Equipment Operators	1,390	36.2	18.0	2,124
	Truck Loading Station Tenders	42	15.1	3.0	134
	Mobile Workers	1,053	25.3	10.0	574
	Miners in Other Occupations	206	14.4	3.0	191

Table C1-1: Summary of Respirable Crystalline Silica in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	ISO Concentration, µg/m³		
			Mean (µg/m³)	Median (µg/m³)	Max (µg/m³)
	Nonmetal OVERALL (All Occupations)	**5,165**	**26.4**	**11.0**	**2,124**
Stone	Drillers	707	35.3	16.0	1,148
	Stone Cutting Operators	1,969	73.7	48.0	999
	Operators of Large Powered Haulage Equipment	3,223	20.2	9.0	559
	Conveyor Operators	44	41.1	23.0	309
	Crushing Equipment and Plant Operators	2,764	35.8	20.0	613
	Kiln, Mill, and Concentrator Workers	308	29.0	10.0	675
	Operators of Small Powered Haulage Equipment	404	34.3	20.0	315
	Packaging Equipment Operators	508	30.0	7.0	1,130
	Truck Loading Station Tenders	113	19.9	3.0	190
	Mobile Workers	4,778	36.2	17.0	1,548
	Miners in Other Occupations	597	24.7	12.0	347
	Stone OVERALL (All Occupations)	**15,415**	**36.6**	**17.0**	**1,548**
Crushed Limestone	Drillers	670	25.5	7.0	1,306
	Stone Cutting Operators	143	75.8	38.0	574
	Operators of Large Powered Haulage Equipment	5,522	15.8	7.0	567
	Conveyor Operators	24	27.7	12.0	164
	Crushing Equipment and Plant Operators	3,593	23.2	11.0	613
	Kiln, Mill, and Concentrator Workers	162	11.0	3.0	81
	Operators of Small Powered Haulage Equipment	162	25.7	10.0	342
	Packaging Equipment Operators	270	11.9	3.0	113
	Truck Loading Station Tenders	122	11.7	3.0	112
	Mobile Workers	3,931	27.8	11.0	4,289
	Miners in Other Occupations	585	17.3	6.0	613
	Crushed Limestone OVERALL (All Occupations)	**15,184**	**21.7**	**10.0**	**4,289**

Table C1-1: Summary of Respirable Crystalline Silica in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	ISO Concentration, µg/m³		
			Mean (µg/m³)	Median (µg/m³)	Max (µg/m³)
Sand and Gravel	Drillers	169	46.6	20.0	959
	Stone Cutting Operators	243	94.3	55.0	1,095
	Operators of Large Powered Haulage Equipment	6,676	22.3	12.0	613
	Conveyor Operators	87	69.9	28.0	1,605
	Crushing Equipment and Plant Operators	3,994	42.9	25.0	613
	Kiln, Mill, and Concentrator Workers	442	81.5	44.0	1,800
	Operators of Small Powered Haulage Equipment	269	61.4	29.0	580
	Packaging Equipment Operators	724	75.1	51.0	652
	Truck Loading Station Tenders	155	59.3	37.0	613
	Mobile Workers	4,450	46.4	23.0	3,676
	Miners in Other Occupations	1,297	28.0	11.0	613
	Sand and Gravel OVERALL (All Occupations)	**18,506**	**38.7**	**20.0**	**3,676**
	MNM OVERALL	**57,769**	**33.2**	**15.0**	**4,289**

Notes:
Summary of personal samples presented as ISO 8-hour TWA concentrations. The proposed permissible exposure limit (PEL) for all mines is 50 µg/m³ as an 8-hour time-weighted average (8-hour TWA) sample collected according to the ISO standard 7708:1995: *Air Quality—Particle Size Fraction Definitions for Health-Related Sampling*.

a. The compliance samples summarized in this table were collected by MSHA inspectors as 8-hour TWAs using ISO-compliant sampling equipment with an air flow rate of 1.7 L/min, with results comparable to the proposed PEL.

b. When the mass of respirable crystalline silica collected was too small to be reliably detected by the laboratory, a mass of 2.5 µg for quartz and 5 µg for cristobalite (1/2 the respective limits of detection for these two forms of crystalline silica) were assumed and used to calculate sample results.

c. The procedure to calculate the ISO 8-hour TWA concentration (µg/m³) is:

$$\text{8-hour TWA} = \frac{quartz\ mass}{(480\ minutes)\ x\ (air\ flow\ rate)}\ x\ 1000\ \frac{L}{m^3}$$

Where: quartz mass is in micrograms (µg); normalized sampling time is 8 hours (480 minutes); flow rate = 1.7 L/min; 1000 Liters (L) per cubic meter (m³)

Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table C1-2: Sample Count Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Sample Counts in ISO Concentration Ranges, µg/m³					
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500
Metal	Drillers	352	220	74	42	13	2	1
	Stone Cutting Operators	10	1	2	3	4	0	0
	Operators of Large Powered Haulage Equipment	673	423	142	80	26	2	0
	Conveyor Operators	29	12	8	4	4	1	0
	Crushing Equipment and Plant Operators	628	173	143	165	115	26	6
	Kiln, Mill, and Concentrator Workers	467	276	99	68	18	5	1
	Operators of Small Powered Haulage Equipment	38	30	5	1	1	0	1
	Packaging Equipment Operators	88	60	8	11	8	1	0
	Truck Loading Station Tenders	21	13	5	1	2	0	0
	Mobile Workers	1,004	500	227	164	82	24	7
	Miners in Other Occupations	189	98	33	32	18	4	4
	Metal SUBTOTAL (All Occupations)	**3,499**	**1,806**	**746**	**571**	**291**	**65**	**20**
Nonmetal	Drillers	194	144	29	13	7	1	0
	Stone Cutting Operators	81	58	8	6	6	2	1
	Operators of Large Powered Haulage Equipment	922	768	94	38	19	3	0
	Conveyor Operators	31	27	4	0	0	0	0
	Crushing Equipment and Plant Operators	586	384	108	68	22	3	1

Table C1-2: Sample Count Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Sample Counts in ISO Concentration Ranges, µg/m³					
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500
	Kiln, Mill, and Concentrator Workers	423	292	81	40	9	1	0
	Operators of Small Powered Haulage Equipment	237	166	30	31	10	0	0
	Packaging Equipment Operators	1,390	808	276	210	83	9	4
	Truck Loading Station Tenders	42	35	4	2	1	0	0
	Mobile Workers	1,053	782	129	93	38	10	1
	Miners in Other Occupations	206	176	17	12	1	0	0
	Nonmetal SUBTOTAL (All Occupations)	**5,165**	**3,640**	**780**	**513**	**196**	**29**	**7**
Stone	Drillers	707	423	149	90	35	8	2
	Stone Cutting Operators	1,969	618	423	548	280	77	23
	Operators of Large Powered Haulage Equipment	3,223	2,443	456	243	75	5	1
	Conveyor Operators	44	23	10	8	2	1	0
	Crushing Equipment and Plant Operators	2,764	1,582	606	386	164	22	4
	Kiln, Mill, and Concentrator Workers	308	219	42	31	11	3	2
	Operators of Small Powered Haulage Equipment	404	228	87	67	18	4	0
	Packaging Equipment Operators	508	393	57	25	22	6	5
	Truck Loading Station Tenders	113	85	11	14	3	0	0
	Mobile Workers	4,778	2,860	946	635	285	38	14

Table C1-2: Sample Count Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Sample Counts in ISO Concentration Ranges, µg/m³					
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500
	Miners in Other Occupations	597	419	100	54	23	1	0
	Stone SUBTOTAL (All Occupations)	**15,415**	**9,293**	**2,887**	**2,101**	**918**	**165**	**51**
Crushed Limestone	Drillers	670	535	64	46	16	5	4
	Stone Cutting Operators	143	50	30	34	19	8	2
	Operators of Large Powered Haulage Equipment	5,522	4,613	564	254	82	7	2
	Conveyor Operators	24	17	3	2	2	0	0
	Crushing Equipment and Plant Operators	3,593	2,650	537	304	80	17	5
	Kiln, Mill, and Concentrator Workers	162	146	10	6	0	0	0
	Operators of Small Powered Haulage Equipment	162	114	24	16	7	1	0
	Packaging Equipment Operators	270	240	17	11	2	0	0
	Truck Loading Station Tenders	122	110	6	5	1	0	0
	Mobile Workers	3,931	2,831	593	344	128	21	14
	Miners in Other Occupations	585	502	46	26	6	4	1
	Crushed Limestone SUBTOTAL (All Occupations)	**15,184**	**11,808**	**1,894**	**1,048**	**343**	**63**	**28**
Sand and Gravel	Drillers	169	99	35	22	8	3	2
	Stone Cutting Operators	243	64	48	79	32	12	8
	Operators of Large Powered Haulage Equipment	6,676	4,891	1,127	502	133	20	3

Table C1-2: Sample Count Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Sample Counts in ISO Concentration Ranges, µg/m³					
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500
	Conveyor Operators	87	41	25	7	11	2	1
	Crushing Equipment and Plant Operators	3,994	2,004	1,014	625	288	53	10
	Kiln, Mill, and Concentrator Workers	442	132	117	118	45	20	10
	Operators of Small Powered Haulage Equipment	269	114	69	51	24	6	5
	Packaging Equipment Operators	724	169	188	229	107	22	9
	Truck Loading Station Tenders	155	59	32	39	22	2	1
	Mobile Workers	4,450	2,341	988	675	343	75	28
	Miners in Other Occupations	1,297	936	198	105	37	16	5
	Sand and Gravel SUBTOTAL (All Occupations)	**18,506**	**10,850**	**3,841**	**2,452**	**1,050**	**231**	**82**
	MNM OVERALL	**57,769**	**37,397**	**10,148**	**6,685**	**2,798**	**553**	**188**

Notes:
a. Personal samples were collected using ISO-compliant sampling equipment and calculated as an 8-hour time-weighted average (8-hour TWA). Samples were collected using an air flow rate of 1.7 L/min and reported as 8-hour TWAs. See notes in Summary table C2-1 for additional details.
b. Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table C1-3: Percentage Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Percentage (%) of Samples in ISO Concentration Ranges, µg/m3						
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500	Total
Metal	Drillers	352	62.5%	21.0%	11.9%	3.7%	0.6%	0.3%	100%
	Stone Cutting Operators	10	10.0%	20.0%	30.0%	40.0%	0.0%	0.0%	100%
	Operators of Large Powered Haulage Equipment	673	62.9%	21.1%	11.9%	3.9%	0.3%	0.0%	100%
	Conveyor Operators	29	41.4%	27.6%	13.8%	13.8%	3.4%	0.0%	100%
	Crushing Equipment and Plant Operators	628	27.5%	22.8%	26.3%	18.3%	4.1%	1.0%	100%
	Kiln, Mill, and Concentrator Workers	467	59.1%	21.2%	14.6%	3.9%	1.1%	0.2%	100%
	Operators of Small Powered Haulage Equipment	38	78.9%	13.2%	2.6%	2.6%	0.0%	2.6%	100%
	Packaging Equipment Operators	88	68.2%	9.1%	12.5%	9.1%	1.1%	0.0%	100%
	Truck Loading Station Tenders	21	61.9%	23.8%	4.8%	9.5%	0.0%	0.0%	100%
	Mobile Workers	1,004	49.8%	22.6%	16.3%	8.2%	2.4%	0.7%	100%
	Miners in Other Occupations	189	51.9%	17.5%	16.9%	9.5%	2.1%	2.1%	100%
	Metal SUBTOTAL (All Occupations)	**3,499**	**51.6%**	**21.3%**	**16.3%**	**8.3%**	**1.9%**	**0.6%**	**100%**
Nonmetal	Drillers	194	74.2%	14.9%	6.7%	3.6%	0.5%	0.0%	100%
	Stone Cutting Operators	81	71.6%	9.9%	7.4%	7.4%	2.5%	1.2%	100%
	Operators of Large Powered Haulage Equipment	922	83.3%	10.2%	4.1%	2.1%	0.3%	0.0%	100%
	Conveyor Operators	31	87.1%	12.9%	0.0%	0.0%	0.0%	0.0%	100%
	Crushing Equipment and Plant Operators	586	65.5%	18.4%	11.6%	3.8%	0.5%	0.2%	100%
	Kiln, Mill, and Concentrator Workers	423	69.0%	19.1%	9.5%	2.1%	0.2%	0.0%	100%

Table C1-3: Percentage Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Percentage (%) of Samples in ISO Concentration Ranges, µg/m3						
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500	Total
	Operators of Small Powered Haulage Equipment	237	70.0%	12.7%	13.1%	4.2%	0.0%	0.0%	100%
	Packaging Equipment Operators	1,390	58.1%	19.9%	15.1%	6.0%	0.6%	0.3%	100%
	Truck Loading Station Tenders	42	83.3%	9.5%	4.8%	2.4%	0.0%	0.0%	100%
	Mobile Workers	1,053	74.3%	12.3%	8.8%	3.6%	0.9%	0.1%	100%
	Miners in Other Occupations	206	85.4%	8.3%	5.8%	0.5%	0.0%	0.0%	100%
	Nonmetal SUBTOTAL (All Occupations)	**5,165**	**70.5%**	**15.1%**	**9.9%**	**3.8%**	**0.6%**	**0.1%**	**100%**
Stone	Drillers	707	59.8%	21.1%	12.7%	5.0%	1.1%	0.3%	100%
	Stone Cutting Operators	1,969	31.4%	21.5%	27.8%	14.2%	3.9%	1.2%	100%
	Operators of Large Powered Haulage Equipment	3,223	75.8%	14.1%	7.5%	2.3%	0.2%	0.0%	100%
	Conveyor Operators	44	52.3%	22.7%	18.2%	4.5%	2.3%	0.0%	100%
	Crushing Equipment and Plant Operators	2,764	57.2%	21.9%	14.0%	5.9%	0.8%	0.1%	100%
	Kiln, Mill, and Concentrator Workers	308	71.1%	13.6%	10.1%	3.6%	1.0%	0.6%	100%
	Operators of Small Powered Haulage Equipment	404	56.4%	21.5%	16.6%	4.5%	1.0%	0.0%	100%
	Packaging Equipment Operators	508	77.4%	11.2%	4.9%	4.3%	1.2%	1.0%	100%
	Truck Loading Station Tenders	113	75.2%	9.7%	12.4%	2.7%	0.0%	0.0%	100%
	Mobile Workers	4,778	59.9%	19.8%	13.3%	6.0%	0.8%	0.3%	100%
	Miners in Other Occupations	597	70.2%	16.8%	9.0%	3.9%	0.2%	0.0%	100%
	Stone SUBTOTAL (All Occupations)	**15,415**	**60.3%**	**18.7%**	**13.6%**	**6.0%**	**1.1%**	**0.3%**	**100%**

Table C1-3: Percentage Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Percentage (%) of Samples in ISO Concentration Ranges, µg/m3						
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500	Total
Crushed Limestone	Drillers	670	79.9%	9.6%	6.9%	2.4%	0.7%	0.6%	100%
	Stone Cutting Operators	143	35.0%	21.0%	23.8%	13.3%	5.6%	1.4%	100%
	Operators of Large Powered Haulage Equipment	5,522	83.5%	10.2%	4.6%	1.5%	0.1%	0.0%	100%
	Conveyor Operators	24	70.8%	12.5%	8.3%	8.3%	0.0%	0.0%	100%
	Crushing Equipment and Plant Operators	3,593	73.8%	14.9%	8.5%	2.2%	0.5%	0.1%	100%
	Kiln, Mill, and Concentrator Workers	162	90.1%	6.2%	3.7%	0.0%	0.0%	0.0%	100%
	Operators of Small Powered Haulage Equipment	162	70.4%	14.8%	9.9%	4.3%	0.6%	0.0%	100%
	Packaging Equipment Operators	270	88.9%	6.3%	4.1%	0.7%	0.0%	0.0%	100%
	Truck Loading Station Tenders	122	90.2%	4.9%	4.1%	0.8%	0.0%	0.0%	100%
	Mobile Workers	3,931	72.0%	15.1%	8.8%	3.3%	0.5%	0.4%	100%
	Miners in Other Occupations	585	85.8%	7.9%	4.4%	1.0%	0.7%	0.2%	100%
	Crushed Limestone SUBTOTAL (All Occupations)	**15,184**	**77.8%**	**12.5%**	**6.9%**	**2.3%**	**0.4%**	**0.2%**	**100%**
Sand and Gravel	Drillers	169	58.6%	20.7%	13.0%	4.7%	1.8%	1.2%	100%
	Stone Cutting Operators	243	26.3%	19.8%	32.5%	13.2%	4.9%	3.3%	100%
	Operators of Large Powered Haulage Equipment	6,676	73.3%	16.9%	7.5%	2.0%	0.3%	0.0%	100%
	Conveyor Operators	87	47.1%	28.7%	8.0%	12.6%	2.3%	1.1%	100%
	Crushing Equipment and Plant Operators	3,994	50.2%	25.4%	15.6%	7.2%	1.3%	0.3%	100%
	Kiln, Mill, and Concentrator Workers	442	29.9%	26.5%	26.7%	10.2%	4.5%	2.3%	100%

Table C1-3: Percentage Distribution of Respirable Crystalline Silica Exposure in the Metal/Nonmetal (MNM) Industry from 2005 to 2019, by Commodity and Occupational Category

Commodity	Occupation	Number of Samples	Percentage (%) of Samples in ISO Concentration Ranges, µg/m3						
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500	Total
	Operators of Small Powered Haulage Equipment	269	42.4%	25.7%	19.0%	8.9%	2.2%	1.9%	100%
	Packaging Equipment Operators	724	23.3%	26.0%	31.6%	14.8%	3.0%	1.2%	100%
	Truck Loading Station Tenders	155	38.1%	20.6%	25.2%	14.2%	1.3%	0.6%	100%
	Mobile Workers	4,450	52.6%	22.2%	15.2%	7.7%	1.7%	0.6%	100%
	Miners in Other Occupations	1,297	72.2%	15.3%	8.1%	2.9%	1.2%	0.4%	100%
	Sand and Gravel SUBTOTAL (All Occupations)	**18,506**	**58.6%**	**20.8%**	**13.2%**	**5.7%**	**1.2%**	**0.4%**	**100%**
	MNM OVERALL	**57,769**	**64.7%**	**17.6%**	**11.6%**	**4.8%**	**1.0%**	**0.3%**	**100%**

Notes:
a. Personal samples were collected using ISO-compliant sampling equipment and calculated as an 8-hour time-weighted average (8-hour TWA). Samples were collected using an air flow rate of 1.7 L/min and reported as 8-hour TWAs. See notes in Summary table C2-1 for additional details.
b. Source: MSHA MSIS respirable crystalline silica data for the MNM industry, January 1, 2005, through December 31, 2019 (version 20220812). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table C2-1: Summary of Respirable Crystalline Silica Exposure in the Coal Industry from 2016 to 2021, by Location and Occupational Category

Location	Occupation	Number of Samples	ISO Concentration (8-hour TWA, µg/m³)		
			Mean	Median	Max
Underground	Continuous Mining Machine Operators (Underground)	9,910	24.6	18.5	390.5
	Operators of Large Powered Haulage Equipment (Underground)	21,777	17.7	13.6	476.8
	Longwall Workers (Underground)	3,176	32.9	22.2	453.4
	Roof Bolters (Underground)	14,306	26.5	20.9	778.6
	Underground Miners (Underground)	3,926	15.7	11.1	324.0
	Underground OVERALL (All Occupations)	**53,095**	**22.1**	**16.0**	**778.6**
Surface	Drillers (Surface)	1,762	36.5	20.9	747.8
	Operators of Large Powered Haulage Equipment (Surface)	5,313	19.9	9.9	721.9
	Crusher Operators (Surface)	631	9.6	6.2	117.0
	Mobile Workers (Surface)	2,326	12.6	8.6	288.3
	Surface OVERALL (All Occupations)	**10,032**	**20.5**	**11.1**	**747.8**
	COAL OVERALL	**63,127**	**21.9**	**16.0**	**778.6**

Notes: Summary of personal samples presented as ISO 8-hour TWA concentrations. The proposed permissible exposure limit (PEL) for all mines is 50 µg/m³ as an 8-hour time-weighted average (8-hour TWA) sample collected according to the ISO standard 7708:1995: *Air Quality—Particle Size Fraction Definitions for Health-Related Sampling*.

a. The compliance samples summarized in this table were collected by MSHA inspectors for the entire duration of each miner's work shift using sampling equipment with an air flow rate of 2 L/min, with results reported as MRE TWA concentrations. For this rulemaking analysis, MSHA recalculated the samples as ISO-equivalent 8-hour TWA concentrations, comparable to the proposed PEL (since samples were not collected using an ISO-compliant sampling method). The procedure to calculate an ISO-equivalent concentration from an MRE TWA sample concentration involves normalizing the sample concentration to an 8-hour TWA and applying the empirically derived conversion factor of 0.857 recommended by NIOSH (1995a) using the following equation:

Table C2-1: Summary of Respirable Crystalline Silica Exposure in the Coal Industry from 2016 to 2021, by Location and Occupational Category

Location	Occupation	Number of Samples	ISO Concentration (8-hour TWA, µg/m³)		
			Mean	Median	Max

b. ISO 8-hour TWA concentration = $(MRE\ TWA\ in\ \mu g/m^3)\ x\ \frac{(original\ sampling\ time)}{(480\ minutes)}\ x\ 0.857$

c. Where: both concentrations (ISO 8-hour TWA and MRE TWA) are concentrations presented as µg/m³; sampling time in minutes.

d. When the mass of respirable crystalline silica collected was too small to be reliably detected by the laboratory, a mass of 1.5 µg (1/2 the limit of detection) was assumed and used to calculate sample results.

e. Source: MSHA MSIS respirable crystalline silica data for the Coal Industry, August 1, 2016, through July 31, 2021 (version 20220617). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table C2-2: Sample Count Distribution of Respirable Crystalline Silica Exposure in the Coal Industry from 2016 to 2021, by Location and Occupational Category

Location	Occupation	Number of Samples	Sample Counts in ISO Concentration Ranges, 8-hour TWA, µg/m³						
			≤ 25 µg/m³	> 25 to ≤ 50 µg/m³	> 50 to ≤ 85.7 µg/m³	> 85.7 to ≤ 100 µg/m³	> 100 to ≤ 250 µg/m³	> 250 to ≤ 500 µg/m³	> 500 µg/m³
Underground	Continuous Mining Machine Operators (Underground)	9,910	6,750	2,366	572	67	144	11	0
	Operators of Large Powered Haulage Equipment (Underground)	21,777	17,938	3,110	576	51	95	7	0
	Longwall Workers (Underground)	3,176	1,767	857	356	62	125	9	0
	Roof Bolters (Underground)	14,306	8,768	4,194	1,093	106	141	3	1
	Underground Miners (Underground)	3,926	3,396	398	96	11	22	3	0
	Underground OVERALL (All Occupations)	**53,095**	**38,619**	**10,925**	**2,693**	**297**	**527**	**33**	**1**
Surface	Drillers (Surface)	1,762	1,019	422	180	30	90	17	4
	Operators of Large Powered Haulage Equipment (Surface)	5,313	4,268	627	219	45	132	18	4
	Crusher Operators (Surface)	631	588	28	13	1	1	0	0
	Mobile Workers (Surface)	2,326	2,102	164	45	3	11	1	0
	Surface OVERALL (All Occupations)	**10,032**	**7,977**	**1,241**	**457**	**79**	**234**	**36**	**8**

	COAL OVERALL	**63,127**	**46,596**	**12,166**	**3,150**	**376**	**761**	**69**	**9**

Notes:

a. Personal samples presented in terms of ISO concentrations, normalized to 8-hour time-weighted averages (TWAs). The samples were originally collected for the entire duration of each miner's work shift, using an air flow rate of 2 L/min. See notes in Summary table C1-1 for additional details.

b. Source: MSHA MSIS respirable crystalline silica data for the coal industry, August 1, 2016, through July 31, 2021 (version 20220617). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Table C2-3: Percentage Distribution of Respirable Crystalline Silica Exposure in the Coal Industry from 2016 to 2021, by Location and Occupational Category

Location	Occupation	Number of Samples	Percentage (%) of Samples in ISO Concentration Ranges, 8-hour TWA, µg/m³							Total
			≤ 25	> 25 to ≤ 50	> 50 to ≤ 85.7	> 85.7 to ≤ 100	> 100 to ≤ 250	> 250 to ≤ 500	> 500	
Underground	Continuous Mining Machine Operators (Underground)	9,910	68.1%	23.9%	5.8%	0.7%	1.5%	0.1%	0%	100%
	Operators of Large Powered Haulage Equipment (Underground)	21,777	82.4%	14.3%	2.6%	0.2%	0.4%	<0.1%	0%	100%
	Longwall Workers (Underground)	3,176	55.6%	27%	11.2%	2%	3.9%	0.3%	0%	100%
	Roof Bolters (Underground)	14,306	61.3%	29.3%	7.6%	0.7%	1%	<0.1%	<0.1%	100%
	Underground Miners (Underground)	3,926	86.5%	10.1%	2.4%	0.3%	0.6%	0.1%	0%	100%
	Underground OVERALL (All Occupations)	**53,095**	**72.7%**	**20.6%**	**5.1%**	**0.6%**	**1%**	**0.1%**	**<0.1%**	**100%**
Surface	Drillers (Surface)	1,762	57.8%	24%	10.2%	1.7%	5.1%	1%	0.2%	100%
	Operators of Large Powered Haulage Equipment (Surface)	5,313	80.3%	11.8%	4.1%	0.8%	2.5%	0.3%	0.1%	100%
	Crusher Operators (Surface)	631	93.2%	4.4%	2.1%	0.2%	0.2%	0%	0%	100%
	Mobile Workers (Surface)	2,326	90.4%	7.1%	1.9%	0.1%	0.5%	<0.1%	0%	100%
	Surface OVERALL (All Occupations)	**10,032**	**79.5%**	**12.4%**	**4.6%**	**0.8%**	**2.3%**	**0.4%**	**0.1%**	**100%**
	COAL OVERALL	**63,127**	**73.8%**	**19.3%**	**5%**	**0.6%**	**1.2%**	**0.1%**	**<0.1%**	**100%**

Notes:

a. Personal samples presented in terms of ISO concentrations, normalized to 8-hour time-weighted averages (TWAs). The samples were originally collected for the entire duration of each miner's work shift, using an air flow rate of 2 L/min. See notes in Summary table C1-1 for additional details.

b. Source: MSHA MSIS respirable crystalline silica data for the coal industry, August 1, 2016, through July 31, 2021 (version 20220617). All samples were of sufficient mass to be analyzed for respirable crystalline silica.

Attachment 3: Coal Job Codes

The complete list of job codes that are found in IAS, as of March 11, 2022, are included below, with Table C3–1 listing job codes for coal miners. For coal, the first digit of the job code identifies where the work is taking place. For example, codes starting with 0 represent jobs that occur at the underground face of the mine. Job codes that start with 6 were added in 2020.

0—Underground Section Workers (Face)
1—General Underground (Non-Face)
2—Underground Transportation (Non-Face)
3—Surface
4—Supervisory and Staff
5—MSHA—State
6—Shaft and Slope Sinking

Table C3-1 Coal Job Codes	
Job Code	**Occupation / Activity**
Underground Section Workers (Face)	
000	Area
001	Belt Man/Conveyor Man
002	Electrician
003	Electrician Helper
004	Mechanic
005	Mechanic Helper
006	Rock Duster
007	Blaster/Shooter/Shotfirer
008	Stopping Builder/Ventilation Man/Mason
009	Supply Man
010	Auger (Jack Setter) (Intake Side)
011	Wireman
012	Roof Bolter (Twin Head) (Intake Side)
013	Shuttle Car Operator (Off Standard Side)
014	Roof Bolter (Twin Head) (Return Side)
015	Fan Attendant
016	Laborer

Table C3-1 Coal Job Codes	
Job Code	**Occupation / Activity**
017	Auger (Timberman) (Return Side)
018	Auger (Timberman) (Intake Side)
019	Roof Bolter (Mounted) (Intake Side)
031	Shotfirer Helper
032	Brattice Man
033	Coal Drill Helper
034	Coal Drill Operator
035	Continuous Miner Helper
036	Continuous Miner Operator
037	Cutting Machine Helper
038	Cutting Machine Operator
039	Hand Loaders
040	Headgate Operator
041	Jack Setter (Longwall)
042	Loading Machine Helper
043	Loading Machine Operator
044	Longwall Operator (Tailgate Side)
045	Rockman
046	Roof Bolter (Single Head)

Table C3-1 Coal Job Codes	
Job Code	**Occupation / Activity**
047	Roof Bolter Helper (Single Head)
048	Roof Bolter (Mounted) (Return Side)
049	Section Foreman
050	Shuttle Car Operator (Standard Side)
051	Stall Driver
052	Tailgate Operator
053	Utility Man
054	Scoop Car Operator
055	Auger (Jack Setter) (Return Side)
060	Longwall (Return-Side Face Worker)
061	Longwall (Return-Side Fixed)
064	Longwall Operator (Headgate Side)
070	Auger Operator
071	Auger Helper
072	Mobile Bridge Operator
073	Shuttle Car Operator (Off Standard)
074	Tractor Operator/Motorman
General Underground (Non-Face)	
101	Belt Man/Conveyor Man
102	Electrician
103	Electrician Helper
104	Mechanic
105	Mechanic Helper
106	Rock Duster
108	Stopping Builder/Ventilation Man/Mason
109	Supply Man
110	Timberman
111	Wireman
112	Belt Vulcanizer
113	Cleanup Man
114	Coal Sampler
115	Fan Attendant
116	Laborer
117	Rodman
118	Oiler/Greaser
119	Welder
122	Coal Dump Operator
123	Transit Man
146	Roof Bolter
149	Bullgang Foreman/Labor Foreman
154	Belt Cleaner

Table C3-1 Coal Job Codes	
Job Code	**Occupation / Activity**
155	Chainman
156	Rock Driller
157	Pumper
158	Rock Machine Operator
159	Water Line Man
160	Shopman
Underground Transportation (Non-Face)	
201	Belt Man/Conveyor Man
216	Trackman
220	Cager
221	Hoistman
240	Loader Head/Roscoe Operator
250	Shuttle Car Operator
261	Battery Station Operator
262	Brakeman/Roperider
263	Track Foreman
265	Dispatcher
269	Motorman
276	Driver
277	Buggy Pusher
Surface	
301	Conveyor Operator
302	Electrician
303	Electrician Helper
304	Mechanic
305	Mechanic Helper
306	Welder (Non-Shop)
307	Blaster/Shooter/Shotfirer
308	Mason
309	Supply Man
310	Scrapper Operator
311	Wireman
312	Belt Vulcanizer
313	Cleanup Man
314	Coal Sampler
315	Fan Attendant
316	Laborer/Blacksmith
317	Rodman
318	Oiler/Greaser
319	Welder (Shop)
320	Cage Attendant/Cager
321	Hoist Engineer/Operator
322	Coal Strip Operator
323	Transit Man

Table C3-1 Coal Job Codes	
Job Code	Occupation / Activity
324	Backhoe Operator
325	Diester Table Operator
326	Forklift Operator
327	Pumper
328	Utility Man
329	Vacuum Filter Operator
330	Face Worker-Shaft/Slope Sinking
331	Clam Operator
333	Coal Drill Helper
334	Coal Drill Operator
340	Boom Operator
341	Belt Man/Conveyor Man
342	Bit Sharpener
343	Car Trimmer/Car Loader
344	Car Shake-Out Operator
345	Crusher Attendant
347	Froth Cell Operator
348	Machinist
349	Rotary Dump Operator
350	Shuttle Car Operator
351	Scoop Operator
352	Steel Worker
354	Sweeper Operator
355	Chainman
356	Rock Driller
357	Washer Operator
358	Water Circuit Operator
359	Self-Propelled Compactor Operator
360	Shopman Repair Cars
362	Brakeman
365	Dispatcher
366	Waterboy
367	Coal Shovel Operator
368	Bulldozer Operator
369	Motorman/Locomotive Operator
370	Auger Operator
371	Auger Helper
372	Barge Attendant
373	Car Dropper
374	Cleaning Plant Operator
375	Road Grader Operator
376	Coal Truck Driver
377	Road Roller Operator

Table C3-1 Coal Job Codes	
Job Code	Occupation / Activity
378	Crane Operator/Dragline Operator
379	Dryer Operator
380	Fine Coal Plant Operator
381	Hoist Operator Helper
382	Highlift Operator/Front End Loader
383	Highwall Drill Helper
384	Highwall Drill Operator
385	Lampman
386	Refuse Truck Driver/Backfill Truck Drive
387	Rotary Bucket Excavator Operator
388	Scalper-Screen Operator
390	Silo Operator
391	Stripping Shovel Operator
392	Tipple Operator
393	Weighman
394	Carpenter
395	Water Truck Operator
396	Watchman
397	Yard Engine Operator
398	Groundman
Supervisory And Staff	
402	Master Electrician
404	Master Mechanic
414	Dust Sampler
418	Maintenance Foreman
423	Surveyor
430	Assist Mine Foreman/Assist Mine Manager
449	Mine Foreman/Mine Manager
456	Engineers (Electricity/Ventilation/Minin
462	Fire Boss Pre-Shift Examiner
464	Inspector
481	Superintendent
489	Outside Foreman
494	Preparation Plant Foreman
495	Safety Director
496	Union Representative
497	Clerk/Timekeeper
MSHA – State	
590	Education Specialist
591	Mineral Industrial Safety Officer
592	Mine Safety Instructor

Table C3-1 Coal Job Codes	
Job Code	**Occupation / Activity**
593	Safety Representative
594	Training Specialist
Shaft and Slope Sinking	
602	Electrician
604	Mechanic
607	Blaster/Shooter/Shot Firer
609	Supply Person
612	(Intake) Twin Head Roof Bolter
614	(Return) Twin Head Roof Bolter
616	Laborer
631	Blaster/Shooter/Shot Firer Helper
632	Ventilation Worker
635	Continuous Miner Operator Helper
636	Continuous Miner Operator
646	Single Head Roof Bolter
647	Single Head Roof Bolter Helper
649	Foreman
650	(Standard Side) Shuttle Car Operator
654	Scoop Car Operator/Mucker
656	Rock Driller
673	(Off Standard Side) Shuttle Car Operator

Attachment 4: MNM Job Codes

The complete list of job codes that are found in IAS, as of March 11, 2022, are included below with Table C4–1 outlining job codes for MNM miners.

Table C4-1 MNM Job Codes	
Job Code	Occupation / Activity
028	Scoop Tram Operator
029	Mucking Machine Operator
030	Slusher
032	Brattice Man
034	Diamond Drill Operator
035	Continuous Miner Helper
036	Continuous Miner Operator
037	Cutting Machine Helper
038	Cutting Machine Operator
039	Hand Loader (Load Only)
041	Jacksetter
043	Gathering Arm Loader Operator
045	Hangup Man, Chute Blaster
046	Rock Bolter, Roof Bolter
048	Roof Bolter Mounted
053	Utility Man
057	Stope Miner
058	Drift Miner
059	Raise Miner
079	Crusher Operator, Crusher Worker, Pan-Feeder Operator
134	Jet-Piercing Channeler Operator
154	Belt Cleaner, Belt Picker
179	Ball, Rod Or Pebble Mill Operator
216	Track Man; Track Gang
234	Jet-Piercing Drill Operator
261	Battery Station Operator
279	Hammer Mill Operator
331	Clam-Shell Operator
334	Wagon Drill Operator
342	Bit Grinder; Bit Sharpener
344	Car Shake-Out Operator
352	Iron Worker, Metal Worker
367	Shovel Operator
368	Bulldozer Operator

Table C4-1 MNM Job Codes	
Job Code	Occupation / Activity
372	Barge Attendant, Boat Operator, Dredge Operator
375	Road Grader Operator
376	Truck Driver
378	Mobile Crane Operator
379	Dryer Operator, Kiln Operator
385	Lampman
387	Rotary Bucket Excavator Operator
388	Scalper-Screen Operator
389	Forklift Operator
392	Toplander, Skip Dumper, Tipple Operator
393	Weighman, Scale Man
394	Carpenter
397	Yard Engineer Operator
399	Dimension Stone Cutter And Polisher; Rock Sawer
413	Janitor
416	Salvage Crew
420	Aerial Tram Operator
434	Churn Drill Operator
456	Engineer (Electrical, Ventilation, Mining, Etc.)
479	Hydrating Plant Operator
488	Dry Screening Plant Operator
513	Building Repair And Maintenance
514	Laboratory Technician
516	Tamping Machine Operator
534	Jacking Or Stoper Drill Operator
579	Slurry, Mixing Or Pumping Operations Worker
588	Sizing And Washing Operations Worker
601	Conveyor Belt Crew
602	Electrician
603	Electrician Helper
604	Mechanic
607	Jackhammer Operator, Chipping Hammer Operator

Table C4-1 MNM Job Codes	
Job Code	Occupation / Activity
608	Mason
609	Supply Man, Nipper
612	Belt Vulcanizer
613	Cleanup Man
614	Sampler, Dust Sampler
616	Laborer, Bullgang
618	Greaser, Oiler
619	Welder (Welding, Cutting, Brazing, Hard Surfacing, Soldering)
622	Dump Operator
623	Surveyor, Transit Man
634	Rotary (Electrical Or Hydraulic) Drill Operator
649	Administrative, Supervisory, Management Personnel
660	Machinist
663	Shaft Miner, Shaft Sinker
668	Tractor Operator
669	Bin Puller; Truck Loader
673	Leaching Operations Worker
674	Warehouseman; Supply Handler
678	Dragline Operator
679	Flotation Mill Operator; Concentrator Operator
682	Scraper-Loader Operator
706	Shotcrete Man, Gunite Man
708	Ventilation Crew
710	Ground Control (Wood And Steel), Timberman
716	Cement Man, Concrete Worker
726	Grizzley Man, Grizzley Tender
728	Complete Load/Haul/Dump Cycle
734	Rotary (Pneumatic) Drill Operator
739	Hand Trimmer (Load And Dump)
747	Scaling (Hand)
750	Shuttle Car Operator (Electrical)
759	Raise Borer Operator
763	Shaft Repairer
765	Sandfiller (Dry Operations)
766	Sandfiller (Wet Operations)
778	Backhoe Operator
779	Pelletizing Operations Worker

Table C4-1 MNM Job Codes	
Job Code	Occupation / Activity
782	Front-End Loader Operator
804	Plumber, Pipe Fitter, Millwright
807	Powder Gang, Powderman, Powder Monkey, Shooter, Shotfitter, Blaster
825	Bobcat Operator
833	Drill Helper, Chuck Tender
847	Scaling (Mechanical)
850	Ramcar Operator
878	Overhead Crane Operator
879	Bagging Or Packaging Operations Worker
894	Painter
920	Cager, Cage Attendant, Station Attendant
921	Hoist Operator
930	Skip Tender
934	Jumbo Percussion Drill Operator
950	Shuttle Car Operator (Electrical)
962	Trip Rider, Swamper
969	Motorman
979	Packaging Operations Worker

Attachment 5. Examples of Job Code Pocket Cards

Inspectors previously received pocket-sized job code cards for use in filling out forms with the correct job code. Now, a drop-down menu in IAS is used to select the codes. Table C5–1 contains Underground Coal Mining Occupation Codes from Coal Job Code Cards used by MESA between 1973 and 1977. Table C5–2 contains Surface Occupation Codes from Coal Job Codes used by MESA between 1973 and 1977.

Coal Job Code Cards, Underground Coal Mining Occupation Codes

Table C5-1 Coal Job Code Cards (MESA, 1973-1977) Underground Coal Mining Occupation Codes	
Job Code	**Occupation / Activity**
Section Workers (Face)	
071	Auger Helper
070	Auger Operator
031	Beater
001	Belt Man/Conveyor Man
007	Blaster
032	Brattice Man
013	Cleanup Man
033	Coal Drill Helper
034	Coal Drill Operator
035	Continuous Miner Helper
036	Continuous Miner Operator
037	Cutting Machine Helper
038	Cutting Machine Operator
002	Electrician
003	Electrician Helper
015	Fan Attendant
039	Hand Loaders
040	Headgate Operator
010	Jack Setter (Auger – intake side)
055	Jack Setter (Auger – return side)
041	Jack Setter (Longwall)
016	Laborer
042	Loading Machine Helper
043	Loading Machine Operator
008	Mason
004	Mechanic

Table C5-1 Coal Job Code Cards (MESA, 1973-1977) Underground Coal Mining Occupation Codes	
Job Code	**Occupation / Activity**
005	Mechanic Helper
010	Prepman
006	Rock Duster
045	Rockman
046	Roof Bolter
047	Roof Bolter Helper
048	Roof Bolter Mounted
054	Scoop Car Operator
049	Section Foreman
044	Sheer Operator/Plow Operator Longwall
007	Shooter
031	Shotfire Helper
007	Shotfirer
050	Shuttle Car Operator
051	Stall Driver
008	Stopping Builder
009	Supply Man
052	Tailgate Operator
010	Timberman
053	Utility Man
008	Ventilation Man
011	Wireman
General Underground (Non-Face)	
154	Belt Cleaner
101	Belt Man/Conveyor Man
112	Belt Vulcanizer
149	Bullgang Foreman
155	Chainman

Table C5-1 Coal Job Code Cards (MESA, 1973-1977) Underground Coal Mining Occupation Codes	
Job Code	Occupation / Activity
113	Cleanup Man
122	Coal Dump Operator
114	Coal Sampler
102	Electrician
103	Electrician Helper
115	Fan Attendant
118	Greaser
149	Labor Foreman
116	Laborer
108	Mason
104	Mechanic
105	Mechanic Helper
118	Oiler
157	Pumper
156	Rock Driller
106	Rock Duster
158	Rock Machine Operator
117	Rodman
146	Roof Bolter
160	Shopman
108	Stopping Builder
109	Supply Man

Table C5-1 Coal Job Code Cards (MESA, 1973-1977) Underground Coal Mining Occupation Codes	
Job Code	Occupation / Activity
110	Timberman
123	Transmit Man
108	Ventilation Man
159	Water Line Man
119	Welder
111	Wireman
Underground Transportation (Non-Face)	
261	Battery Station Operator
201	Belt Man/Conveyor Man
262	Brakeman
277	Buggy Pusher
220	Cager
265	Dispatcher
276	Driver
221	Hoistman
240	Leader Head Operator
269	Motorman
262	Rope Rider
240	Roscoe Operator
250	Shuttle Car Operator
216	Trackman

Coal Job Code Cards, Surface Occupation Codes

Table C5-2 Coal Job Code Cards (MESA, 1973-1977) Surface Occupation Codes	
Job Code	Occupation / Activity
100	*203(b) Miner
370	Auger Operator
371	Auger Helper
372	Barge Attendant
312	Belt Vulcanizer
307	Blaster
368	Bulldozer Operator
340	Boom Operator
362	Brakeman
320	Cage Attendant/Cager
373	Car Dropper
394	Carpenter
355	Chainman

Table C5-2 Coal Job Code Cards (MESA, 1973-1977) Surface Occupation Codes	
Job Code	Occupation / Activity
331	Clam Operator
374	Cleaning Plant Operator
313	Cleanup Man
333	Coal Drill Helper
334	Coal Drill Operator
322	Coal Strip Operator
314	Coal Sampler
367	Coal Shovel Operator
376	Coal Truck Driver
301	Conveyor Operator
378	Crane Operator
365	Dispatcher
378	Dragline Operator

Table C5-2 Coal Job Code Cards (MESA, 1973-1977) Surface Occupation Codes	
Job Code	**Occupation / Activity**
379	Dryer Operator
302	Electrician
303	Electrician Helper
315	Fan Attendant
380	Fine Coal Plant Operator
318	Greaser
398	Groundman
382	Highlift Operator
383	Highwall Drill Helper
384	Highwall Drill Operator
321	Hoist Engineer/Operator
381	Hoist Operator Helper
316	Laborer Blacksmith
385	Lampman
308	Mason
304	Mechanic
305	Mechanic Helper
369	Motorman
318	Oiler
310	Pan Scraper Operator
386	Refuse Truck Driver
375	Road Grader Operator
356	Rock Driller
317	Rodman
387	Rotary Bucket Excavator Operator
388	Scalper-Screen Operator
360	Shopman Repair Care
307	Shooter
307	Shotfirer
350	Shuttle Car Operator
390	Silo Operator
391	Stripping Shovel Operator
309	Supply Man
392	Tipple Operator

Table C5-2 Coal Job Code Cards (MESA, 1973-1977) Surface Occupation Codes	
Job Code	**Occupation / Activity**
323	Transmit Man
396	Watchman
366	Waterboy
395	Water Truck Operator
393	Weighman
319	Welder (Shop) Blacksmith
311	Wireman
397	Yard Engine Operator
Supervisory and Staff	
430	Assistant Mine Foreman/Assistant Mine Manager
497	Clerk
414	Dust Sampler
456	Engineers (Electricity, Ventilation, Mining, etc.)
462	Fire Boss Pre-Shift Examiner
464	Inspector
418	Maintenance Foreman
402	Master Electrician
404	Master Mechanic
449	Mine Foreman/Mine Manager
489	Outside Foreman
494	Preparation Plant Foreman
495	Safety Director
481	Superintendent
423	Surveyor
497	Timekeeper
496	Union Representative
MESA – State	
590	Education Specialist
591	Mineral Industry Safety Officer
592	Mine Safety Instructor
593	Safety Representative
594	Training Specialist

MNM Job Code Cards (1997)

Table C5–3 includes MNM Job Codes from a MNM Job Code Card printed in 1997 by the GPO and which referenced a 1981 MSHA form (MSHA Form 4000–50, Sept. 1981).

Table C5-3 MNM Job Code Cards (1997)	
Job Code	**Occupation / Activity**
Development and Production	
607	Jackhammer Operator; Chipping Hammer Operator
807	Powder Gang; Powderman; Power Monkey; Shooter; Shotfirer; Blaster
609	Supply Man; Nipper
710	Ground Control (wood and steel); Timberman
216	Track Man; Track Gang
516	Tamping Machine Operator
833	Drill Helper; Chuck Tender
034	Diamond Drill Operator
134	Jet-Piercing Channeler Operator
234	Jet-Piercing Drill Operator
334	Wagon Drill Operator
434	Churn Drill Operator
534	Jackleg or Stoper Drill Operator
634	Rotary (electric or hydraulic) Drill Operator
734	Rotary (pneumatic) Drill Operator
934	Jumbo Percussion Drill Operator
035	Continuous Miner Helper
036	Continuous Miner Operator
037	Cutting Machine Helper
038	Cutting Machine Operator
045	Hangup Man; Chute Blaster
046	Rock Bolter; Roof Bolter
747	Scaling (hand)
847	Scaling (mechanical)
048	Roof Bolter Mounted
053	Utility Man
057	Stope Miner
058	Drift Miner
059	Raise Miner
759	Raise Borer Operator
663	Shaft Miner; Shaft Sinking
765	Sandfiller (dry operations)
766	Sandfiller (wet operations)
399	Dimension Stone Cutter and Polisher; Rock Sawer
Ore/Mineral Processing	
673	Leaching Operations Worker

Table C5-3 MNM Job Code Cards (1997)	
Job Code	**Occupation / Activity**
079	Crusher Operator; Crusher Worker; Pan-Feeder Operator
179	Ball, Rod, or Pebble Mill Operator
279	Hammer Mill Operator
379	Dryer Operator; Kiln Operator
479	Hydrating Plant Operator
579	Slurry, Mixing or Pumping Operations Worker
679	Flotation Mill Operator; Concentrator Operator
779	Pelletizing Operations Worker
879	Bagging or Packaging Operations Worker
388	Scalper-Screen Operator
488	Dry Screening Plant Operator
588	Sizing and Washing Operations Worker
Load/Haul/Dump	
601	Conveyor Belt Crew
420	Aerial Tram Operator
920	Cager; Cage Attendant; Station Attendant
921	Hoist Operator
622	Dump Operator
825	Bobcat Operator
726	Grizzly Man; Grizzly Tender
028	Scoop-Tram Operator
728	Complete Load/Haul/Dump Cycle
029	Mucking Machine Operator
030	Slusher Operator
930	Skip Tender
331	Clam-Shell Operator
039	Hand Loader (load only)
739	Hand Trammer (load and dump)
043	Gathering Arm Loader Operator
344	Car Shake-Out Operator
750	Shuttle Car Operator (diesel)
850	Ramcar Operator
950	Shuttle Car Operator (electric)
154	Belt Cleaner; Belt Picker
962	Trip Rider; Swamper
367	Shovel Operator
368	Bulldozer Operator
668	Tractor Operator

Table C5-3 MNM Job Code Cards (1997)	
Job Code	**Occupation / Activity**
669	Bin Puller; Truck Loader
969	Motorman
372	Barge Attendant; Boat Operator; Dredge Operator
376	Truck Driver
378	Mobile Crane Operator
678	Dragline Operator
778	Backhoe Operator
878	Overhead Crane Operator
682	Scraper-Loader Operator
782	Front-End Loader Operator
387	Rotary Bucket Excavator Operator
389	Forklift Operator
392	Toplander; Skip Dumper; Tipple Operator
393	Weighman; Scale Man
397	Yard Engine Operator
Maintenance	
602	Electrician
603	Electrician Helper
604	Mechanic
804	Plumber; Pipe Fitter; Millwright
706	Shotcrete Man; Gunite Man
608	Mason
708	Ventilation Crew
612	Belt Vulcanizer
513	Building Repair and Maintenance
613	Cleanup Man

Table C5-3 MNM Job Code Cards (1997)	
Job Code	**Occupation / Activity**
416	Salvage Crew
616	Laborer; Bullgang
716	Cement Man; Concrete Worker
618	Greaser; Oiler
619	Welder (welding, cutting, brazing, hard surfacing, soldering)
032	Brattice Man
041	Jacksetter
342	Bit Grinder; Bit Sharpener
352	Iron Worker; Metal Worker
660	Machinist
261	Battery Station Operator
763	Shaft Repairer
375	Road Grader Operator
385	Lampman
394	Carpenter
894	Painter
Miscellaneous	
413	Janitor
514	Laboratory Technician
614	Sampler; Dust Sampler
623	Surveyor; Transmit Man
649	Administrative, Supervisory, Management Personnel
456	Engineer (electrical, ventilation, mining, etc.); Technical Services
674	Warehouseman; Supply Handler

BILLING CODE 4520–43–C

List of Subjects

30 CFR Part 56

Chemicals, Electric power, Explosives, Fire prevention, Hazardous substances, Incorporation by reference, Metal and nonmetal mining, Mine safety and health, Noise control, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 57

Chemicals, Electric power, Explosives, Fire prevention, Gases, Hazardous substances, Incorporation by reference, Metal and nonmetal mining, Mine safety and health, Noise control, Radiation protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 60

Coal, Incorporation by reference, Metal and nonmetal mining, Medical surveillance, Mine safety and health, Respirable crystalline silica, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 70

Coal, Mine safety and health, Reporting and recordkeeping requirements, Respirable dust, Underground coal mines.

30 CFR Part 71

Coal, Mine safety and health, Reporting and recordkeeping requirements, Surface coal mines, Underground coal mines.

30 CFR Part 72

Coal, Health standards, Incorporation by reference, Mine safety and health, Training, Underground mining.

30 CFR Part 75

Coal, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines, Ventilation.

30 CFR Part 90

Coal, Mine safety and health, Reporting and recordkeeping requirements, Respirable dust.

Christopher J. Williamson,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons discussed in the preamble, the Mine Safety and Health Administration is proposing to amend 30 CFR subchapters K, M, and O as follows:

Subchapter K-Metal and Nonmetal Mine Safety and Health

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

Subpart D—Air Quality and Physical Agents

■ 2. Amend § 56.5001 by revising paragraph (a) to read as follows:

§ 56.5001 Exposure limits for airborne contaminants.

* * * * *

(a) Except as provided in paragraph (b) of this section and in part 60 of this chapter, the exposure to airborne contaminants shall not exceed, on the basis of a time weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists, as set forth and explained in the 1973 edition of the Conference's publication, entitled ''TLV's Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973,'' pages 1 through 54. This publication is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202–5450; 202–693–9440; or at any MSHA Metal and Nonmetal Mine Safety and Health District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from American Conference of Governmental Industrial Hygienists, 1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; *www.acgih.org.*

* * * * *

■ 3. Amend § 56.5005 by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 56.5005 Control of exposure to airborne contaminants.

Control of employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or by dilution with uncontaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment. Whenever respiratory protective equipment is used, its selection, fitting, maintenance, cleaning, training, supervision, and use shall meet the following minimum requirements:

* * * * *

(b) Approved respirators shall be selected, fitted, cleaned, used, and maintained in accordance with the requirements, as applicable, of ASTM F3387–19. ASTM F3387–19, Standard Practice for Respiratory Protection approved August 1, 2019, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202–5450; 202–693–9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; *www.astm.org/.*

(c) When respiratory protection is used in atmospheres immediately dangerous to life or health (IDLH), the presence of at least one other person with backup equipment and rescue capability shall be required in the event of failure of the respiratory equipment.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

■ 4. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

Subpart D—Air Quality, Radiation, Physical Agents, and Diesel Particulate Matter

■ 5. Amend § 57.5001 by revising paragraph (a) to read as follows:

§ 57.5001 Exposure limits for airborne contaminants.

* * * * *

(a) Except as provided in paragraph (b) of this section and in part 60 of this chapter, the exposure to airborne contaminants shall not exceed, on the basis of a time weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists, as set forth and explained in the 1973 edition of the Conference's publication, entitled ''TLV's Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973,'' pages 1 through 54. Excursions above the listed thresholds shall not be of a greater magnitude than is characterized as permissible by the Conference. This publication is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202–5450; 202–693–9440; or any MSHA Metal and Nonmetal Mine Safety and Health District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from American Conference of Governmental Industrial Hygienists by writing to 1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; *www.acgih.org.*

* * * * *

■ 6. Amend § 57.5005 by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 57.5005 Control of exposure to airborne contaminants.

Control of employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, removal by exhaust

ventilation, or by dilution with uncontaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment. Whenever respiratory protective equipment is used, its selection, fitting, maintenance, cleaning, training, supervision, and use shall meet the following minimum requirements:

* * * * *

(b) Approved respirators shall be selected, fitted, cleaned, used, and maintained in accordance with the requirements, as applicable, of ASTM F3387–19. ASTM F3387–19, Standard Practice for Respiratory Protection approved August 1, 2019, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202–5450; 202–693–9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; *www.astm.org/.*

(c) When respiratory protection is used in atmospheres immediately dangerous to life or health (IDLH), the presence of at least one other person with backup equipment and rescue capability shall be required in the event of failure of the respiratory equipment.

Subchapter M-Uniform Mine Health Regulations

■ 7. Add part 60 to subchapter M to read as follows:

PART 60–RESPIRABLE CRYSTALLINE SILICA

Sec.

60.1 Scope; effective date.
60.2 Definitions.
60.10 Permissible exposure limit (PEL).
60.11 Methods of compliance.
60.12 Exposure monitoring.
60.13 Corrective actions.
60.14 Respiratory protection.
60.15 Medical surveillance for metal and nonmetal miners.
60.16 Recordkeeping requirements.
60.17 Severability.

Authority: 30 U.S.C. 811, 813(h) and 957.

§ 60.1 Scope; effective date.

This part sets forth mandatory health standards for each surface and underground metal, nonmetal, and coal mine subject to the Federal Mine Safety and Health Act of 1977, as amended. Requirements regarding medical surveillance for metal and nonmetal miners are also included. The provisions of this part are effective [date 120 days after publication of the final rule].

§ 60.2 Definitions.

The following definitions apply in this part:

Action level means an airborne concentration of respirable crystalline silica of 25 micrograms per cubic meter of air (μg/m^3) for a full-shift exposure, calculated as an 8-hour time-weighted average (TWA).

Objective data means information, such as air monitoring data from industry-wide surveys or calculations based on the composition of a substance, demonstrating miner exposure to respirable crystalline silica associated with a particular product or material or a specific process, task, or activity. The data must reflect mining conditions closely resembling or with a higher exposure potential than the processes, types of material, control methods, work practices, and environmental conditions in the operator's current operations.

Respirable crystalline silica means quartz, cristobalite, and/or tridymite contained in airborne particles that are determined to be respirable by a sampling device designed to meet the characteristics for respirable-particle-size-selective samplers that conform to the International Organization for Standardization (ISO) 7708:1995: Air Quality—Particle Size Fraction Definitions for Health-Related Sampling.

Specialist means an American Board-Certified Specialist in Pulmonary Disease or an American Board-Certified Specialist in Occupational Medicine.

§ 60.10 Permissible exposure limit (PEL).

The mine operator shall ensure that no miner is exposed to an airborne concentration of respirable crystalline silica in excess of 50 μg/m^3 for a full-shift exposure, calculated as an 8-hour TWA.

§ 60.11 Methods of compliance.

(a) The mine operator shall install, use, and maintain feasible engineering controls, supplemented by administrative controls when necessary, to keep each miner's exposure at or below the PEL, except as specified in § 60.14.

(b) Rotation of miners shall not be considered an acceptable administrative control used for compliance with this part.

§ 60.12 Exposure monitoring.

(a) *Baseline sampling.* (1) The mine operator shall perform baseline sampling within the first 180 days after [date 120 days after publication of the final rule] to assess the full shift, 8-hour TWA exposure of respirable crystalline silica for each miner who is or may reasonably be expected to be exposed to respirable crystalline silica.

(2) The mine operator is not required to conduct periodic sampling under paragraph (b) of this section if the baseline sampling indicates that miner exposures are below the action level and if the conditions in either paragraph (a)(2)(i) or (ii) of this section are met:

(i) One of the following sources from within the preceding 12 months of baseline sampling indicates that miner exposures are below the action level:

(A) Sampling conducted by the Secretary; or

(B) Mine operator sampling conducted in accordance with paragraphs (f) and (g) of this section; or

(C) Objective data.

(ii) Subsequent sampling that is conducted within 3 months after the baseline sampling indicates that miner exposures are below the action level.

(b) *Periodic sampling.* Where the most recent sampling indicates that miner exposures are at or above the action level but at or below the PEL, the mine operator shall sample within 3 months of that sampling and continue to sample within 3 months of the previous sampling until two consecutive samplings indicate that miner exposures are below the action level.

(c) *Corrective actions sampling.* Where the most recent sampling indicates that miner exposures are above the PEL, the mine operator shall sample after corrective actions taken pursuant to § 60.13 until the sampling indicates that miner exposures are at or below the PEL.

(d) *Semi-annual evaluation.* At least every 6 months after [date one year after the effective date of the final rule], mine operators shall evaluate any changes in

production, processes, engineering or administrative controls, or other factors that may reasonably be expected to result in new or increased respirable crystalline silica exposures. Once the evaluation is completed, the mine operator shall:

(1) Make a record of the evaluation and the date of the evaluation; and

(2) Post the record on the mine bulletin board and, if applicable, by electronic means, for the next 31 days.

(e) *Post-evaluation sampling.* If the mine operator determines as a result of the semi-annual evaluation under paragraph (d) of this section that miners may be exposed to respirable crystalline silica at or above the action level, the mine operator shall perform sampling to assess the full shift, 8-hour TWA exposure of respirable crystalline silica for each miner who is or may reasonably be expected to be at or above the action level.

(f) *Sampling requirements.* (1) Sampling shall be performed for the duration of a miner's regular full shift and during typical mining activities.

(2) The full-shift, 8-hour TWA exposure for such miners shall be measured based on:

(i) Personal breathing-zone air samples for metal and nonmetal operations; or

(ii) Occupational environmental samples collected in accordance with § 70.201(c) or (b) or § 90.201(b) of this chapter for coal operations.

(3) Where several miners perform the same tasks on the same shift and in the same work area, the mine operator may sample a representative fraction (at least two) of these miners to meet the requirements in paragraphs (a) through (e) of this section. In sampling a representative fraction of miners, the mine operator shall select the miners who are expected to have the highest exposure to respirable crystalline silica.

(4) The mine operator shall use respirable-particle-size-selective samplers that conform to ISO 7708:1995 to determine compliance with the PEL. ISO 7708:1995, Air Quality—Particle Size Fraction Definitions for Health-Related Sampling, Edition 1, 1995–04, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202–5450; 202–693–9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the International Organization for Standardization (ISO), CP 56, CH–1211 Geneva 20, Switzerland; phone: + 41 22 749 01 11; fax: + 41 22 733 34 30; website: *www.iso.org.*

(g) *Methods of sample analysis.* (1) The mine operator shall use a laboratory that is accredited to ISO/IEC 17025 ''General requirements for the competence of testing and calibration laboratories'' with respect to respirable crystalline silica analyses, where the accreditation has been issued by a body that is compliant with ISO/IEC 17011 ''Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies.''

(2) The mine operator shall ensure that the laboratory evaluates all samples using respirable crystalline silica analytical methods specified by MSHA, the National Institute for Occupational Safety and Health (NIOSH), or the Occupational Safety and Health Administration (OSHA).

(h) *Sampling records.* For each sample taken pursuant to paragraphs (a) through (e) of this section, the mine operator shall make a record of the sample date, the occupations sampled, and the concentrations of respirable crystalline silica and respirable dust, and post the record and the laboratory report on the mine bulletin board and, if applicable, by electronic means, for the next 31 days, upon receipt.

§ 60.13 Corrective actions.

(a) If any sampling indicates that a miner's exposure exceeds the PEL, the mine operator shall:

(1) Make approved respirators available to affected miners before the start of the next work shift in accordance with § 60.14;

(2) Ensure that affected miners wear respirators properly for the full shift or during the period of overexposure until miner exposures are at or below the PEL; and

(3) Immediately take corrective actions to lower the concentration of respirable crystalline silica to at or below the PEL.

(4) Once corrective actions have been taken, the mine operator shall:

(i) Conduct sampling pursuant to § 60.12(c); and

(ii) Take additional or new corrective actions until sampling indicates miner exposures are at or below the PEL.

(b) The mine operator shall make a record of corrective actions and the dates of the corrective actions under paragraph (a) of this section.

§ 60.14 Respiratory protection.

(a) *Temporary non-routine use of respirators.* The mine operator shall use respiratory protection as a temporary measure in accordance with paragraph (c) of this section. Miners must use respirators when working in concentrations of respirable crystalline silica above the PEL while:

(1) Engineering control measures are being developed and implemented; or

(2) It is necessary by the nature of work involved.

(b) *Miners unable to wear respirators.* Upon written determination by a physician or other licensed health care professional (PLHCP) that an affected miner is unable to wear a respirator, the miner shall be temporarily transferred either to work in a separate area of the same mine or to an occupation at the same mine where respiratory protection is not required.

(1) The affected miner shall continue to receive compensation at no less than the regular rate of pay in the occupation held by that miner immediately prior to the transfer.

(2) The affected miner may be transferred back to the miner's initial work area or occupation when temporary non-routine use of respirators under paragraph (a) of this section is no longer required.

(c) *Respiratory protection requirements.* (1) Affected miners shall be provided with a NIOSH-approved atmosphere-supplying respirator or NIOSH-approved air-purifying respirator equipped with the following:

(i) Particulate protection classified as 100 series under 42 CFR part 84; or

(ii) Particulate protection classified as High Efficiency ''HE'' under 42 CFR part 84.

(2) Approved respirators shall be selected, fitted, used, and maintained in accordance with the requirements, as applicable, of ASTM F3387–19. ASTM F3387–19, Standard Practice for Respiratory Protection approved August 1, 2019, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202–5450; 202–693–9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of

this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; *www.astm.org/.*

§ 60.15 Medical surveillance for metal and nonmetal miners.

(a) *Medical surveillance.* Each operator of a metal and nonmetal mine shall provide to each miner periodic medical examinations performed by a physician or other licensed health care professional (PLHCP) or specialist, as defined in § 60.2, at no cost to the miner.

(1) Medical examinations shall be provided at frequencies specified in this section.

(2) Medical examinations shall include:

(i) A medical and work history, with emphasis on: past and present exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system; any history of respiratory system dysfunction, including diagnoses and symptoms of respiratory disease (*e.g.,* shortness of breath, cough, wheezing); history of tuberculosis; and smoking status and history;

(ii) A physical examination with special emphasis on the respiratory system;

(iii) A chest X-ray (a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems), classified according to the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader; and

(iv) A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV_1) and FEV_1/FVC ratio, administered by a spirometry technician with a current certificate from a NIOSH-approved Spirometry Program Sponsor.

(b) *Voluntary medical examinations.* Each mine operator shall provide the opportunity to have the medical examinations specified in paragraph (a) of this section at least every 5 years to all miners employed at the mine. The medical examinations shall be available during a 6-month period that begins no less than 3.5 years and not more than 4.5 years from the end of the last 6-month period.

(c) *Mandatory medical examinations.* For each miner who begins work in the mining industry for the first time, the mine operator shall provide medical examinations specified in paragraph (a) of this section as follows:

(1) An initial medical examination no later than 30 days after beginning employment;

(2) A follow-up medical examination no later than 3 years after the initial examination in paragraph (c)(1) of this section; and

(3) A follow-up medical examination conducted by a specialist no later than 2 years after the examinations in paragraph (c)(2) of this section if the chest X-ray shows evidence of pneumoconiosis or the spirometry examination indicates evidence of decreased lung function.

(d) *Medical examinations results.* The results of medical examinations or tests made pursuant to this section shall be provided only to the miner, and at the request of the miner, to the miner's designated physician.

(e) *Written medical opinion.* The mine operator shall obtain a written medical opinion from the PLHCP or specialist within 30 days of the medical examination. The written opinion shall contain only the following:

(1) The date of the medical examination;

(2) A statement that the examination has met the requirements of this section; and

(3) Any recommended limitations on the miner's use of respirators.

(f) *Written medical opinion records.* The mine operator shall maintain a record of the written medical opinions received from the PLHCP or specialist under paragraph (e) of this section.

§ 60.16 Recordkeeping requirements.

(a) Table 1 to this paragraph (a) lists the records the mine operator shall retain and their retention period.

(1) Evaluation records made under § 60.12(d) shall be retained for at least 2 years from the date of each evaluation.

(2) Sampling records made under § 60.12(h) shall be retained for at least 2 years from the sample date.

(3) Corrective action records made under § 60.13(b) shall be retained for at least 2 years from the date of each corrective action. These records must be stored with the records of related sampling under § 60.12(h).

(4) Written determination records received from a PLHCP under § 60.14(b) shall be retained for the duration of the miner's employment plus 6 months.

(5) Written medical opinion records received from a PLHCP or specialist under § 60.15(f) shall be retained for the duration of the miner's employment plus 6 months.

TABLE 1 TO PARAGRAPH (a)—RECORDKEEPING REQUIREMENTS

Record	Section references	Retention period
1. Evaluation records	§ 60.12(d)	At least 2 years from date of each evaluation.
2. Sampling records	§ 60.12(h)	At least 2 years from sample date.
3. Corrective action records	§ 60.13(b)	At least 2 years from date of each corrective action.
4. Written determination records received from a PLHCP.	§ 60.14(b)	Duration of miner's employment plus 6 months.
5. Written medical opinion records received from a PLHCP or specialist.	§ 60.15(f)	Duration of miner's employment plus 6 months.

(b) Upon request from an authorized representative of the Secretary, from an authorized representative of miners, or from miners, mine operators shall promptly provide access to any record listed in this section.

§ 60.17 Severability.

Each section of this part, as well as sections in 30 CFR parts 56, 57, 70, 71, 72, 75, and 90 that address respirable crystalline silica or respiratory protection, is separate and severable from the other sections and provisions. If any provision of this subpart is held to be invalid or unenforceable by its terms, or as applied to any person, entity, or circumstance, or is stayed or enjoined, that provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from these

sections and shall not affect the remainder thereof.

Subchapter O—Coal Mine Safety and Health

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

■ 8. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

Subpart A—General

§ 70.2 [Amended]

■ 9. Amend § 70.2 by removing the definition of ''Quartz''.

Subpart B—Dust Standards

§ 70.101 [Removed and Reserved]

■ 10. Remove and reserve § 70.101.

Subpart C—Sampling Procedures

■ 11. Amend § 70.205 by revising paragraph (c) to read as follows:

§ 70.205 Approved sampling devices; operation; air flowrate.

* * * * *

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved mine ventilation plan to assure: The sampling device is in the proper location and operating properly; and the work environment of the occupation or DA being sampled remains in compliance with the standard at the end of the shift. This monitoring is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

§ 70.206 [Removed and Reserved]

■ 12. Remove and reserve § 70.206.

§ 70.207 [Removed and Reserved]

■ 13. Remove and reserve § 70.207.

■ 14. Amend § 70.208 by:

■ a. Removing and reserving paragraph (c);

■ b. Revising paragraphs (d), (e) introductory text, (e)(2), (f), (g), (h) introductory text, (h)(2), (i) introductory text, and (i)(1); and

■ c. Adding table 1.

The revisions and addition read as follows:

§ 70.208 Quarterly sampling; mechanized mining units.

* * * * *

(d) If a normal production shift is not achieved, the DO or ODO sample for that shift may be voided by MSHA. However, any sample, regardless of production, that exceeds the standard by at least 0.1 mg/m^3 shall be used in the determination of the equivalent concentration for that occupation.

(e) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used, the operator shall:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the respirable dust standard; and

* * * * *

(f) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Three or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used.

(g)(1) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard involving a DO in an MMU, paragraph (a)(1) of this section shall not apply to the DO in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

(2) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard involving a type of ODO in an MMU, paragraph (a)(2) of this section shall not apply to that ODO type in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

(h) Upon issuance of a citation for violation of the standard, the operator shall take the following actions sequentially:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

* * * * *

(i) A citation for a violation of the standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the standard; and

* * * * *

TABLE 1 TO § 70.208—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON A SINGLE SAMPLE, THREE SAMPLES, OR THE AVERAGE OF FIVE OR FIFTEEN FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Section	Samples	ECV (mg/m^3)	
		CMDPSU	CPDM
70.208 (e)	70.100(a)—Single sample	1.79	1.70
	70.100(b)—Single sample	0.74	0.57
70.208(f)(1)	70.100(a)—3 or more samples	1.79	1.70
	70.100(b)—3 or more samples	0.74	0.57
70.208(f)(2)	70.100(a)—5 sample average	1.63	1.59
	70.100(b)—5 sample average	0.61	0.53
70.208(f)(2)	70.100(a)—15 sample average	1.58	1.56
	70.100(b)—15 sample average	0.57	0.52
70.208(i)(1)	70.100(a)—Each of 5 samples	1.79	1.70
	70.100(b)—Each of 5 samples	0.74	0.57

■ 15. Amend § 70.209 by:

■ a. Removing and reserving paragraph (b);

■ b. Revising paragraphs (c) introductory text, (c)(2), (d), (e), (f) introductory text, (f)(2), (g) introductory text, and (g)(1); and

■ c. Adding table 1.

The revisions and addition read as follows:

§ 70.209 Quarterly sampling; designated areas.

* * * * *

(c) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used, the operator shall:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the respirable dust standard; and

* * * * *

(d) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used.

(e) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard, paragraph (a) of this section shall not apply to that DA until the violation is abated and the citation is terminated in accordance with paragraphs (f) and (g) of this section.

(f) Upon issuance of a citation for a violation of the standard, the operator shall take the following actions sequentially:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

* * * * *

(g) A citation for a violation of the standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the standard; and

* * * * *

TABLE 1 TO § 70.209—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON A SINGLE SAMPLE, TWO SAMPLES, OR THE AVERAGE OF FIVE OR FIFTEEN FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Section	Samples	ECV (mg/m³)	
		CMDPSU	CPDM
70.209 (c)	70.100(a)—Single sample	1.79	1.70
	70.100(b)—Single sample	0.74	0.57
70.209(d)(1)	70.100(a)—2 or more samples	1.79	1.70
	70.100(b)—2 or more samples	0.74	0.57
70.209(d)(2)	70.100(a)—5 sample average	1.63	1.59
	70.100(b)—5 sample average	0.61	0.53
70.209(d)(2)	70.100(a)—15 sample average	1.58	1.56
	70.100(b)—15 sample average	0.57	0.52
70.209(g)(1)	70.100(a)—Each of 5 samples	1.79	1.70
	70.100(b)—Each of 5 samples	0.74	0.57

Table 70—1 to Subpart C of Part 70 [Removed]

■ 16. Remove table 70–1 to subpart C of part 70.

Table 70—2 to Subpart C of Part 70 [Removed]

■ 17. Remove table 70–2 to subpart C of part 70.

PART 71—MANDATORY HEALTH STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811, 813(h), 957.

Subpart A—General

§ 71.2 [Amended]

■ 19. Amend § 71.2 by removing the definition of ''Quartz''.

Subpart B—Dust Standards

§ 71.101 [Removed and Reserved]

■ 20. Remove and reserve § 71.101.

Subpart C—Sampling Procedures

■ 21. Amend § 71.205 by revising paragraph (c) to read as follows:

§ 71.205 Approved sampling devices; operation; air flowrate.

* * * * *

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved respirable dust control plan, if applicable, to assure: The sampling device is in the proper location and operating properly; and the work environment of the occupation being sampled remains in compliance with the standard at the end of the shift.

■ 22. Amend § 71.206 by:

■ a. Removing and reserving paragraph (b);

■ b. Revising paragraphs (e), (g), (h) introductory text, (h)(2), (i), (j), (k) introductory text, (k)(2), and (l);

■ c. Removing tables 71–1 and 71–2;

■ d. Revising paragraphs (m) and (n); and

■ e. Adding table 1.

The revisions and addition read as follows:

§ 71.206 Quarterly sampling; designated work positions.

* * * * *

(e) Each DWP sample shall be taken on a normal work shift. If a normal work shift is not achieved, the respirable dust sample shall be transmitted to MSHA with a notation by the person certified in sampling on the back of the dust data card stating that the sample was not taken on a normal work shift. When a normal work shift is not achieved, the sample for that shift may be voided by MSHA. However, any sample, regardless of whether a normal work shift was achieved, that exceeds the standard by at least 0.1 mg/m³ shall be used in the determination of the equivalent concentration for that occupation.

* * * * *

(g) Upon notification from MSHA that any valid representative sample taken from a DWP to meet the requirements of paragraph (a) of this section exceeds the standard, the operator shall, within 15 calendar days of notification, sample that DWP each normal work shift until five valid representative samples are

taken. The operator shall begin sampling on the first normal work shift following receipt of notification.

(h) When a valid representative sample taken in accordance with this section meets or exceeds the excessive concentration value (ECV) in table 1 to this section that corresponds to the particular sampling device used, the mine operator shall:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

* * * * *

(i) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used.

(j) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard, paragraph (a) of this section shall not apply to that DWP until the violation is abated and the citation is terminated in accordance with paragraphs (k) and (l) of this section.

(k) Upon issuance of a citation for violation of the standard, the operator shall take the following actions sequentially:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

* * * * *

(l) A citation for violation of the standard shall be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is at or below the standard.

(m) The District Manager may designate for sampling under this section additional work positions at a surface coal mine and at a surface work area of an underground coal mine where a concentration of respirable dust exceeding 50 percent of the standard has been measured by one or more MSHA valid representative samples.

(n) The District Manager may withdraw from sampling any DWP designated for sampling under paragraph (m) of this section upon finding that the operator is able to maintain continuing compliance with the standard. This finding shall be based on the results of MSHA and operator valid representative samples taken during at least a 12-month period.

TABLE 1 TO § 71.206—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON A SINGLE SAMPLE, TWO SAMPLES, OR THE AVERAGE OF FIVE FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Section	Samples	ECV (mg/m³)	
		CMDPSU	CPDM
71.206(h)	Single sample	1.79	1.70
71.206(i)(1)	2 or more samples	1.79	1.70
71.206(i)(2)	5 sample average	1.63	1.59
71.206(l)	Each of 5 samples	1.79	1.70

Subpart D—Respirable Dust Control Plans

■ 23. Amend § 71.300 by revising paragraph (a) introductory text to read as follows:

§ 71.300 Respirable dust control plan; filing requirements.

(a) Within 15 calendar days after the termination date of a citation for violation of the standard, the operator shall submit to the District Manager for approval a written respirable dust control plan applicable to the DWP identified in the citation. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust to at or below the standard at the DWP identified in the citation.

* * * * *

■ 24. Amend § 71.301 by revising paragraph (a)(1) to read as follows:

§ 71.301 Respirable dust control plan; approval by District Manager and posting.

(a) * * *

(1) The respirable dust control measures would be likely to maintain concentrations of respirable coal mine dust at or below the standard; and

* * * * *

PART 72—HEALTH STANDARDS FOR COAL MINES

■ 25. The authority citation for part 72 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

Subpart E—Miscellaneous

■ 26. Revise § 72.710 to read as follows:

§ 72.710 Selection, fit, use, and maintenance of approved respirators.

Approved respirators shall be selected, fitted, used, and maintained in accordance with the provisions of a respiratory protection program consistent with the requirements, as applicable, of ASTM F3387–19. ASTM F3387–19, Standard Practice for Respiratory Protection approved August 1, 2019, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202–5450; 202–693–9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; *www.astm.org/.*

■ 27. Revise § 72.800 to read as follows:

§ 72.800 Single, full-shift measurement of respirable coal mine dust.

The Secretary will use a single, full-shift measurement of respirable coal mine dust to determine the average concentration on a shift since that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift. Noncompliance with the respirable dust standard, in accordance with this subchapter, is demonstrated when a single, full-shift measurement taken by

MSHA meets or exceeds the applicable ECV in table 1 to § 70.208, table 1 to § 70.209, table 1 to § 71.206, or table 1 to § 90.207 of this chapter that corresponds to the particular sampling device used. Upon issuance of a citation for a violation of the standard, and for MSHA to terminate the citation, the mine operator shall take the specified actions in this subchapter.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 28. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

Subpart D—Ventilation

■ 29. Amend § 75.350 by:
■ a. Revising paragraph (b)(3)(i);
■ b. Removing paragraph (b)(3)(ii); and
■ c. Redesignating (b)(3)(iii) as (b)(3)(ii).
The revision reads as follows:

§ 75.350 Belt air course ventilation.

* * * * *

(b) * * *

(3) * * *

(i) The average concentration of respirable dust in the belt air course, when used as a section intake air course, shall be maintained at or below 0.5 milligrams per cubic meter of air (mg/m^3).

* * * * *

PART 90—MANDATORY HEALTH STANDARDS—COAL MINERS WHO HAVE EVIDENCE OF THE DEVELOPMENT OF PNEUMOCONIOSIS

■ 30. The authority citation for part 90 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

Subpart A—General

■ 31. Amend § 90.2 by revising the definition of ''Part 90 miner'' and removing the definition of ''Quartz''.
The revision reads as follows:

§ 90.2 Definitions.

* * * * *

Part 90 miner. A miner employed at a coal mine who has exercised the option under the old section 203(b) program (36 FR 20601 preview citation details, October 27, 1971), or under § 90.3 to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the standard, and who has not waived these rights.

* * * * *

■ 32. Amend § 90.3 by revising paragraph (a) to read as follows:

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at a coal mine who, in the judgment of the Secretary of HHS, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of HHS, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the standard. Each of these miners shall be notified in writing of eligibility to exercise the option.

* * * * *

Subpart B—Dust Standards, Rights of Part 90 Miners

§ 90.101 [Removed and Reserved]

■ 33. Remove and reserve § 90.101.
■ 34. Amend § 90.102 by revising paragraph (a) to read as follows:

§ 90.102 Transfer; notice.

(a) Whenever a Part 90 miner is transferred in order to meet the standard, the operator shall transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a Part 90 miner to a different coal mine, a newly created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer. The requirements of this paragraph do not apply when the respirable dust concentration in a Part 90 miner's work position complies with the standard but circumstances, such as reductions in workforce or changes in operational status, require a change in the miner's job or shift assignment.

* * * * *

■ 35. Amend § 90.104 by revising paragraph (a)(2) to read as follows:

§ 90.104 Waiver of rights; re-exercise of option.

(a) * * *

(2) Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding the standard; or

* * * * *

Subpart C—Sampling Procedures

■ 36. Amend § 90.205 by revising paragraph (c) to read as follows:

§ 90.205 Approved sampling devices; operation; air flowrate.

* * * * *

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved respirable dust control plan, if applicable, to assure: The sampling device is in the proper location and operating properly; and the work environment of the Part 90 miner being sampled remains in compliance with the standard at the end of the shift. This monitoring is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

■ 37. Amend § 90.206 by revising paragraphs (b) and (c) to read as follows:

§ 90.206 Exercise of option or transfer sampling.

* * * * *

(b) Noncompliance with the standard shall be determined in accordance with § 90.207(d).

(c) Upon issuance of a citation for a violation of the standard, the operator shall comply with § 90.207(f).

■ 38. Amend § 90.207 by:
■ a. Removing and reserving paragraph (b);
■ b. Revising paragraphs (c) introductory text, (c)(2), (d), (e), (f) introductory text, (f)(2) introductory text, (f)(2)(ii), and (g);
■ c. Removing tables 90–1 and 90–2; and
■ d. Adding table 1.
The revisions and addition read as follows:

§ 90.207 Quarterly sampling.

* * * * *

(c) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in table 1 to this section corresponding to the particular sampling device used, the mine operator shall:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to below the standard; and

* * * * *

(d) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds

the ECV in table 1 to this section that corresponds to the particular sampling device used.

(e) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard, paragraph (a) of this section shall not apply to that Part 90 miner until the violation is abated and the citation is terminated in accordance with paragraphs (f) and (g) of this section.

(f) Upon issuance of a citation for a violation of the standard, the operator shall take the following actions sequentially:

* * * * *

(2) Immediately take corrective action to lower the concentration of respirable dust to below the standard. If the corrective action involves:

* * * * *

(ii) Transferring the Part 90 miner to another work position at the mine to meet the standard, the operator shall comply with § 90.102 and then sample the affected miner in accordance with § 90.206(a).

* * * * *

(g) A citation for a violation of the standard shall be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is below the standard.

TABLE 1 TO § 90.207—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON A SINGLE SAMPLE, TWO SAMPLES, OR THE AVERAGE OF FIVE FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Section	Samples	ECV (mg/m^3)	
		CMDPSU	CPDM
90.207(c)	Single sample	0.74	0.57
90.207(d)(1)	2 or more samples	0.74	0.57
90.207(d)(2)	5 sample average	0.61	0.53
90.207(g)	Each of 5 samples	0.74	0.57

Subpart D—Respirable Dust Control Plans

■ 39. Amend § 90.300 by revising paragraphs (a) and (b)(3) to read as follows:

§ 90.300 Respirable dust control plan; filing requirements.

(a) If an operator abates a violation of the standard by reducing the respirable dust level in the position of the Part 90 miner, the operator shall submit to the District Manager for approval a written respirable dust control plan for the Part 90 miner in the position identified in the citation within 15 calendar days after the citation is terminated. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust below the standard for that Part 90 miner.

(b) * * *

(3) A detailed description of how each of the respirable dust control measures used to continuously maintain concentrations of respirable coal mine dust below the standard; and

* * * * *

■ 40. Amend § 90.301 by revising paragraphs (a)(1) and (b) to read as follows:

§ 90.301 Respirable dust control plan; approval by District Manager; copy to part 90 miner.

(a) * * *

(1) The respirable dust control measures would be likely to maintain concentrations of respirable coal mine dust below the standard; and

* * * * *

(b) MSHA may take respirable dust samples to determine whether the respirable dust control measures in the operator's plan effectively maintain concentrations of respirable coal mine dust below the standard.

* * * * *

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Part III

Department of Health and Human Services

45 CFR Part 98

Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970–AD02

Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services, Administration for Children and Families proposes to amend the Child Care and Development Fund (CCDF) regulations. This notice of proposed rulemaking (NPRM) proposes changes to lower families' child care costs, which can be a significant financial strain for families and disincentivize work, training, and education. It proposes changes to improve child care provider payment rates and practices to increase parent choice for child care arrangements and help stabilize operations for participating providers. It also proposes ways for CCDF Lead Agencies to streamline eligibility and enrollment processes so families can receive child care assistance faster and so program bureaucracy is less likely to disrupt parent employment, training, and education and impede access to child care. The NPRM also includes technical and other changes to improve clarity and program implementation.

DATES: In order to be considered, written comments on this proposed rule must be received on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by docket number ACF–2023–0003 and/or RIN number 0970–AD02, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number or RIN number for this rulemaking. To ensure we can effectively respond to your comment(s), clearly identify the issue(s) on which you are commenting. Provide the page number, identify the column, and cite the relevant paragraph/section from the **Federal Register** document (*e.g.,* On page 10999, second column, § 98.20(a)(1)(i)). All comments received are a part of the public record and will be posted for public viewing on *www.regulations.gov,* without change. That means all personal identifying information (such as name or address) will be publicly accessible. Please do not submit confidential information, or otherwise sensitive or protected information. We accept anonymous comments. If you wish to remain anonymous, enter ''N/A'' in the required fields.

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Office of Child Care, 202–690–6499 or *megan.campbell@acf.hhs.gov.*

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I. Background

The Child Care and Development Block Grant Act, hereafter referred to as the ''Act'' or (42 U.S.C. 9857 *et seq.*), together with section 418 of the Social Security Act (42 U.S.C. 618), authorize the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to supporting families with low incomes access child care and to increasing the quality of child care for all children. CCDF plays a vital role in supporting child development and family well-being, facilitating employment, training, and education, and improving the economic well-being of participating families. In fiscal year (FY) 2020, the most current available data, more than 900,000 families and 1.5 million children benefited from financial assistance through CCDF each month.[1] At the same time, CCDF funding promotes the quality of child care for the sector: CCDF Lead Agencies must spend at least 12 percent of their CCDF funding each year to increase the quality of child care for all children.

In the years since the 2014 Reauthorization of the Child Care and Development Block Grant (CCDBG) Act and the last CCDF final rule in 2016 (2016 CCDF final rule (81 FR 67438, Sept. 30, 2016)), CCDF Lead Agencies have worked hard to strengthen child care policies and practices, but child care remains a broken system in crisis due to chronic underinvestment: Parents struggle to find affordable high-quality care that meets their needs and the system relies on a very poorly compensated workforce and unaffordable parent fees.[2] The COVID–19 public health emergency exacerbated these challenges, highlighting both the fragility of the child care sector and the central role child care plays in propping up the economy. Numerous child care programs closed their doors permanently before sufficient Federal supports arrived in 2021. A national analysis found that from December 2019 to March 2021, 9 percent of licensed child care centers and 10 percent of licensed family child care homes closed.[3] Many providers could not survive higher costs, labor shortages, and unstable enrollment when operating margins are so thin even in the best of times. In a 2022 survey of parents with children under the age of 5, 54 percent

[1] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-1.*

[2] U.S. Department of the Treasury (September 2021). The Economics of Child Care Supply in the United States, *https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.*

[3] Child Care Aware of America. (March 2022). Demanding Change: Repairing Our Child Care System. Arlington, VA: Child Care Aware of America *https://www.childcareaware.org/demanding-change-repairing-our-child-care-system/#supply.*

of parents reported that child care was unavailable, and 41 percent reported the location of programs was a barrier.[4] Another 2022 national survey of parents with children under age 14 found that 43 percent of parents reported child care was much harder to find compared to 2021,[5] suggesting a growing need to address supply issues and the conditions that make child care unstable. Lead Agencies leveraged significant, one-time investments provided by the American Rescue Plan Act and other COVID–19 relief funding packages to help mitigate the extent of these issues.[6] The FY 2024 President's Budget requested a historic $424 billion over 10 years to further stabilize the child care sector by making high-quality child care more affordable for working families and increasing child care provider pay. As Congress contemplates this proposal, HHS is exercising its regulatory authority to provide additional clarity around key policies that are needed to provide more help for families so they can find child care that meets their families' needs and for the continued stabilization of the child care sector.

Access to affordable high-quality child care has numerous benefits for children, families, and society as a whole, supporting child and family wellbeing in the short-term and across the lifespan in a manner that fuels prosperity and strengthens communities and the economy. It is a necessity for most families with young children and improves parental earnings and employment.[7] [8] [9] Reliable access to child care supports parents' educational attainment,[10] labor force participation, and full-time employment.[11] Maternal employment increases in response to more available and more affordable child care,[12] [13] and conversely, maternal employment rates drop when child care becomes more expensive for families, across income brackets.[14] The positive effects of high-quality child care are especially pronounced for families with low incomes and families experiencing adversity.[15] Children with stably employed parents are far less likely to experience poverty, particularly deep poverty, than children whose parents have less consistent employment.[16] High-quality child care environments can also be important for children's cognitive, behavioral, and socio-emotional development, helping chart a pathway to succeed in school and beyond.[17]

Despite the importance of access to high-quality child care to children, families, communities, and to our country's economic growth, most families struggle to find or afford high-quality child care for their children because of the limited supply—there are not enough programs to serve families who need it, many programs do not offer care the hours or days families require it, and unaffordable costs lead parents to select lower quality care or forego it altogether.[18] Every year, parents, employers, and taxpayers miss out on $122 billion in lost earnings, productivity, and tax revenue because of lack of child care.[19] One in four parents of children under three have been fired from or quit a job because of challenges securing child care, and 41 percent have turned down a new job offer for this reason.[20] Over their lifetime, parents who pause their careers to care for children lose three to four times their annual salary for each year out of the workforce.[21] A parent who remains out of the workforce for five years reduces their overall lifetime earnings by nearly 20 percent.[22] Not only is child care expensive for most families, but more than half of families in the United States live in communities where potential demand for child care outstrips supply by at least three to one (called child care deserts).[23]

For many families, child care is prohibitively expensive. In 34 states and the District of Columbia, enrolling an infant in a child care center costs more than in-state college tuition.[24] Families with children under age five and incomes below the Federal poverty line

[4] ParentsAction Together. (March 2022). New Survey Shows Middle and Low Income Parents Struggling to Find Child Care They Can Afford: As a Result, 62% of Respondents Had to Cut Back on Work Hours. Washington, DC: ParentsAction Together. *https://parentstogetheraction.org/2022/03/17/new-survey-shows-middle-and-low-income-parents-struggling-to-find-child-care-they-can-afford-as-a-result-62-of-respondents-had-to-cut-back-on-work-hours/.*

[5] *Care.com.* (June 2022). This is how much child care costs in 2022. *https://www.care.com/c/how-much-does-child-care-cost/.*

[6] U.S. Department of Health and Human Services, Administration for Children and Families. (May 25, 2023). COVID Investments in Child Care: Supporting Children, Families, and Providers. *https://www.acf.hhs.gov/occ/infographic/covid-investments-child-care-supporting-children-families-and-providers.*

[7] Council of Economic Advisors (2014). *The Economics of Early Childhood Investments.* Accessed from *https://obamawhitehouse.archives.gov/sites/default/files/docs/early_childhood_report_update_final_non-embargo.pdf.*

[8] Hartley, R.P., Chaudry, A., Boteach, M., Mitchell, E., & Menefee, K. (2021). A lifetime worth of benefits: The effects of affordable, high-quality child care on family income, the gender earnings gap, and women's retirement security. Washington, DC: National Women's Law Center and New York, NY: Center on Poverty and Social Policy at Columbia University. *https://nwlc.org/resource/a-lifetimes-worth-of-benefits-the-effects-of-affordable-high-quality-child-care-on-family-income-the-gender-earnings-gap-and-womens-retirement-security/.*

[9] Shonkoff, J.P., & Phillips, D.A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.

[10] Gault, B. and Reichlin Cruse, L. (2017). Access to Child Care Can Improve Student Parent Graduation Rates. Washington, DC: Institute for Women's Policy Research. *https://iwpr.org/iwpr-general/access-to-child-care-can-improve-student-parent-graduation-rates/.*

[11] Landivar, L.C. et al. (2021). Are States Created Equal? Moving to a State with More Expensive Childcare Reduces Mothers' Odds of Employment. *Demography, 58*(2), 451–470. *https://read.dukeupress.edu/demography/article/58/2/451/169632/Are-States-Created-Equal-Moving-to-a-State-With.*

[12] Herbst, C. (2022). ''Child Care in the United States: Markets, Policy, and Evidence.'' Journal of Policy Analysis and Management. *https://doi.org/10.1002/pam.22436.*

[13] Herbst, C., and E. Tekin, 2011. ''Do Child Care Subsidies Influence Single Mothers' Decision to Invest in Human Capital?'' Economics of Education Review 30, no. 5: 901–12. *https://doi.org/10.1016/j.econedurev.2011.03.006.*

[14] Landivar, Liana Christin, Nikki L. Graf, and Giorleny Altamirano Rayo. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. Women's Bureau Issue Brief. U.S. Department of Labor. *https://www.dol.gov/sites/dolgov/files/WB/NDCP/508_WB_IssueBrief-NDCP-20230213.pdf.*

[15] See, for example, Bustamante et al. (2022). Adult outcomes of sustained high-quality early learning child care and education: Do they vary by family income? *Child Development, 93*(2), 502–523. *https://srcd.onlinelibrary.wiley.com/doi/10.1111/cdev.13696.*

[16] Thomson, D., Ryberg, R., Harper, K., Fuller, J., Paschall, K., Franklin, J., & Guzman, L. (2022). Lessons From a Historic Decline in Child Poverty. Bethesda, MD: Child Trends. *https://www.childtrends.org/publications/lessons-from-a-historic-decline-in-child-poverty.*

[17] Shonkoff, J.P., & Phillips, D.A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.

[18] Federal Reserve Bank of St. Louis. The Economic Impact of Child Care by State. *https://www.stlouisfed.org/community-development/child-care-economic-impact.*

[19] Bishop, Sandra. (2023). $122 Billion: The growing, annual cost of the infant-toddler child care crisis. Washington, DC: ReadyNation. Council for a Strong America. *https://www.strongnation.org/articles/2038-122-billion-the-growing-annual-cost-of-the-infant-toddler-child-care-crisis.*

[20] Bishop, Sandra. (2023). $122 Billion: The growing, annual cost of the infant-toddler child care crisis. Washington, DC: ReadyNation. Council for a Strong America. *https://www.strongnation.org/articles/2038-122-billion-the-growing-annual-cost-of-the-infant-toddler-child-care-crisis.*

[21] Madowitz, M., Rowell, A., and Hamm, K. (2016). Calculating the Hidden Costs of Interrupting a Career for Child Care. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care/.*

[22] Ibid.

[23] Malik, R. et al., (2018). America's Child Care Deserts in 2018. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/americas-child-care-deserts-2018/.*

[24] Child Care Aware of America. (2022). Price of Care: 2021 child care affordability analysis. Arlington, VA: Child Care Aware of America *https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care/#ChildCareAffordability.*

who pay for child care spend 36 percent of their income on child care on average, which leaves insufficient funding for food, housing, and other basic costs.[25] Households with incomes just above the Federal poverty level spend more than 20 percent of their income on child care, on average.[26] The cost of child care can drive families to seek out less expensive care, which may be unlicensed or unregulated and have less rigorous quality or safety standards and be less reliable, or forego child care entirely and exit the workforce.[27] Even when families receive child care subsidies, affordability, in terms of co-payments, often remain a concern and can limit families' access to the child care that best meets their needs.[28] [29] Co-payments can be a barrier to parent employment, training, or education and are associated with family financial stress and economic hardship. Research finds that parents receiving subsidies continue to experience substantial financial burden in meeting their portion of child care costs.[30] [31] Other research shows that higher out-of-pocket child care expenses, such as co-payments, reduce families' child care use and parental (particularly maternal) employment.[32]

Moreover, an inadequate supply of child care continues to be a significant problem nationally. A 2018 analysis found that 51 percent of families with children under the age of 5 lived in a ''child care desert''—an area where the availability of licensed child care is so low that there are three times as many children under age 5 as there are spaces in licensed settings.[33] A 2019 analysis of supply and demand in 35 states found only 7.8 million child care slots for the 11.1 million children under the age of 5 with the potential need for child care.[34] In the 2019 National Household Education Survey on Early Childhood Program Participation, parents of children under the age of 6 reported the lack of open child care slots as the second biggest barrier to finding child care, with cost being the first.[35] Parents have long struggled to find child care that meets their needs, and the decline in child care options, especially family child care homes, has perpetuated the problem. Between 2012 and 2019, the number of family child care providers decreased by 25 percent [36] without a complementary increase in center-based programs.[37] As previously noted, the COVID–19 public health emergency put significant additional strains on child care supply.[38] [39] [40]

A key contributor to this lack of supply is though child care is often unaffordable and inaccessible for many families, child care providers usually operate with profit margins of less than 1 percent.[41] To remain open, child care providers must keep costs low, and because labor is the main business expense, this translates to low wages and minimal benefits for essential and skilled work overwhelmingly done by women and disproportionately by women of color.[42] These working conditions also lead to high turnover, with an estimated 26 to 40 percent of the child care workforce leaving their job each year.[43]

Unfortunately, limited funding and policies that do not adequately support families and child care providers exacerbate systemic problems and interfere with CCDF fully meeting its purposes and goals. Child care subsidies only reach a small proportion of eligible families, with only 16 percent of the 12.5 million eligible children receiving assistance in FY 2019.[44] Average CCDF co-payments in nine states exceed 7 percent of family income, which can be a significant and destabilizing financial strain on family budgets and barrier to

[25] Madowitz et al. (2016). Calculating the Hidden Cost of Interrupting a Career for Child Care. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care/.*

[26] National Survey of Early Care and Education Project Team (2022): Erin Hardy, Ji Eun Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022–05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). *https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.*

[27] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.*

[28] National Survey of Early Care and Education Project Team (2022): Erin Hardy, Ji Eun Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022–05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). *https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.*

[29] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.*

[30] Scott, E.K., Leymon, A.S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. *https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.*

[31] Grobe, Deana & Weber, Roberta & Davis, Elizabeth & Scott, Ellen. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93–121. *https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.*

[32] Morrissey, T.W. (2017). ''Child care and parent labor force participation: a review of the research literature.'' *Review of Economics of the Household* 15.1: 1–24. *https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.*

[33] Malik, R. et al., (2018). America's Child Care Deserts in 2018. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/americas-child-care-deserts-2018/.*

[34] Smith, L., Bagley, A., and Wolters, B. (November 2021). Child Care in 35 States: What we know and don't know. Washington, DC: Bipartisan Policy Center. *https://childcaregap.org/assets/Child%20Care%20in%2035%20States.pdf.*

[35] Cui, J., and Natzke, L. (2021). Early Childhood Program Participation: 2019 (NCES 2020–075REV), National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC. *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020075REV.*

[36] A.R. Datta, C. Milesi, S. Srivastava, C. Zapata-Gietl, (2021). NSECE Chartbook—Home-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021–85, Washington DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/nsece-hb-chartbook-counts-and-characteristics.*

[37] A.R. Datta, Z. Gebhardt, C. Zapata-Gietl, (2021). Center-based Early Care and Education Providers in 2012 and 2019: Counts and Characteristics. OPRE Report No. 2021–222, Washington DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/sites/default/files/documents/opre/cb-counts-and-characteristics-chartbook_508_2.pdf.*

[38] Child Care Aware of America. (March 2022). Demanding Change: Repairing Our Child Care System. *https://www.childcareaware.org/demanding-change-repairing-our-child-care-system/#supply.*

[39] Connecticut Association for Human Services. (July 2022). Child Care at a Breaking Point: The Cost for Parents to Work *https://cahs.org/pdf/child-care-survey-report7-15-22.pdf.*

[40] Powell, L. and Kravitz, D. (August 2022). ''Michigan's child care crisis is worse than policymakers have estimated'', *Chalkbeat Detroit. https://detroit.chalkbeat.org/2022/8/31/23329007/michigan-child-care-crisis-deserts-worse-policymakers-day-care.*

[41] U.S. Department of the Treasury. (2021). The Economics of Child Care Supply in the United States. *https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.*

[42] Ibid.

[43] Ibid.

[44] Chien, Nina. (September 2022). Factsheet: Estimates of Child Care Eligibility & Receipt for Fiscal Year 2019. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning & Evaluation. *https://aspe.hhs.gov/sites/default/files/documents/1d276a590ac166214a5415bee430d5e9/cy2019-child-care-subsidy-eligibility.pdf.*

participating in the CCDF program and maintaining employment.[45 46] In addition, current CCDF payment rates and practices used by many States, Territories, and Tribes do not adequately cover the cost of providing high-quality care, particularly in low-income communities, undermining child care availability and parent choice. Some child care providers may find that relying on federally-subsidized child care introduces significant financial instability, which threatens their business viability. This instability may also lead providers to avoid serving families using child care subsidies.

This NPRM puts forth proposals to address some of the programmatic and systemic challenges described here to build toward a better child care system that properly addresses the needs of families across the country. Though significant investments and bold system reform are needed to fully realize this goal, it is clear the status quo is untenable and that more must be done in the interim through this NPRM, to make it easier for parents with low incomes to access affordable high-quality child care that meets their family's needs. First, to make child care more affordable to families participating in CCDF this NPRM proposes to require that Lead Agencies establish co-payment policies that ensure families receiving assistance under CCDF pay no more than 7 percent of their family income for child care. Further, the NPRM provides Lead Agencies increased flexibility to waive co-payments for additional families, in particular for families living at or below 150 percent of the Federal poverty level. Second, this NPRM proposes to improve payment rates and practices to increase the financial stability of child care providers that currently accept CCDF subsidies. This will encourage new providers to participate in the subsidy system, improve the quality of child care, promote continuity of care, and expand parent choice in care arrangements.[47] Third, the proposed revisions in this NPRM encourage Lead Agencies to reduce the burden on families of applying and re-applying for child care subsidies. This NPRM seeks to make presumptive eligibility an easier process for CCDF Lead Agencies and encourages more efficient enrollment and re-enrollment processes. Finally, this NPRM includes technical and other proposals to improve program clarity for Lead Agencies, parents, and providers.

Throughout the period since 2016 when the last CCDF Rule was published, HHS has continued to learn from Lead Agencies, parents, and child care providers; assessed the evolving early care and education landscape; examined the successes and challenges in the Act's implementation; and tracked the impact and implications of the COVID–19 public health emergency on the child care sector. The proposed revisions in this NPRM are designed to build on these lessons, improve on the work of the past, and build a stronger CCDF program that more effectively supports the development of children, the economic wellbeing of families, and the stability of child care providers.

Costs, Benefits, and Transfer Impacts

Changes made by this proposed rule would have the most direct benefit for the over 900,000 families and 1.5 million children who use CCDF assistance to pay for child care. Families who receive CCDF assistance will benefit from lower parent co-payments, more parent choice in care arrangements, expanded and easier access to child care which could improve the ability of families to participate in the labor market, and improved eligibility determination processes. Research has demonstrated that increased access to child care increases maternal labor force participation.[48] In particular, child care subsidies have been found to increase employment among single mothers.[49] International evidence also demonstrates the link between increased early care attendance and maternal employment.[50]

Providers will benefit from payment practices that support their financial stability, including prospective payments based on enrollment, and payments that more closely reflect the cost of providing high-quality care, which could lead to higher wages for providers and their staff.[51] This rule also yields benefits in terms of child development outcomes. The provisions in this rule expand access and some children who might have received subsidized care under the current rule (*e.g.,* those whose parents could not pay the copay) would receive subsidized care under the proposed rule. For these children, they are likely to receive higher quality care than they otherwise would have. Research has demonstrated clear linkages between high quality child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[52 53 54 55]

[45] Landivar, L.C., Graf, N.L., & Rayo, G.A. (2023). Childcare Prices in Local Areas: Initial Findings from the National Database of Childcare Prices. U.S. Department of Labor. *https://www.dol.gov/sites/dolgov/files/WB/NDCP/508_WB_IssueBrief-NDCP-20230213.pdf.*

[46] 81 FR 67515 (*https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf*).

[47] Giapponi Schneider, K., Erickson Warfield, M., Joshi, P., Ha, Y., & Hodgkin, D. (2017). Insights into the black box of child care supply: Predictors of provider participation in the Massachusetts child care subsidy system. (*https://www.sciencedirect.com/science/article/abs/pii/S0190740917300750*); Rohacek M., & Adams, G. (2017). Providers in the child care subsidy system. (*https://www.urban.org/sites/default/files/publication/95221/providers-and-subsidies.pdf*). Phillips, D., Mekos, D., Scarr, S., McCartney, K., & Abbott-Shim, M. (2000). Within and beyond the classroom door: Assessing quality in child care centers. (*https://www.sciencedirect.com/science/article/abs/pii/S0885200601000771*). Torquati, J.C., Raikes, H., Hudleston-Casas, C.A. (2007). Teacher education, motivation, compensation, workplace support, and links to quality of center-based child care and teachers' intention to stay in the early childhood profession. (*https://www.sciencedirect.com/science/article/abs/pii/S0885200607000270*). Miller, J.A., & Bogatova, T. (2009). Quality improvements in the early care and education workforce: Outcomes and impact of the T.E.A.C.H early childhood project. (*https://pubmed.ncbi.nlm.nih.gov/19285728/*). Burroughs, N., Graber, C., Colby, A., Winans, N., & Quinn, D. (2020). Policy change effects on subsidy approvals and utilization: Michigan child care policy research partnership. (*https://publicpolicy.com/wp-content/uploads/2021/04/Policy-Change-Effects-on-Child-Care-Subsidy-Approvals-and-Utilization.pdf*); Weber, R.B., Grobe, D., & Davis, E.E. (2014). Does policy matter? The effect of increasing child care subsidy policy generosity on program outcomes. (*https://health.oregonstate.edu/sites/health.oregonstate.edu/files/occrp/pdf/the-effect-of-increasing-child-care-subsid-policy-generosity-on-program-outcomes.pdf*).

[48] Morrissey, T.W. (2017). ''Child care and parent labor force participation: a review of the research literature.'' *Review of Economics of the Household* 15.1: 1–24. *https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf*

[49] Blau, D., Tekin, E. (2007). The determinants and consequences of child care subsidies for single mothers in the USA. Journal of Population Economics 20, 719–741. *https://doi.org/10.1007/s00148-005-0022-2.*

[50] Bauernschuster, S, and Schlotter, M. (2015). Public child care and mothers' labor supply—Evidence from two quasi-experiments. Journal of Public Economics, 123: 1–16. *https://doi.org/10.1016/j.jpubeco.2014.12.013.*

[51] Borowsky, J., et al (2022). An equilibrium model of the impact of increased public investment in early childhood education. Working Paper 30140. *http://www.nber.org/papers/w30140.*

[52] Deming, David. 2009. ''Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start.'' American Economic Journal: Applied Economics, 1 (3): 111–34.

[53] Duncan, G.J., and Magnuson, K. 2013. ''Investing in Preschool Programs.'' Journal of Economic Perspectives, 27 (2): 109–132

[54] Heckman, James J., and Tim Kautz. ''Fostering and Measuring Skills Interventions That Improve Character and Cognition.'' In The Myth of Achievement Tests: The GED and the Role of Character in American Life. Edited by James J. Heckman, John Eric Humphries, and Tim Kautz (eds). University of Chicago Press, 2014. Chicago Scholarship Online, 2014. *https://doi.org/10.7208/chicago/9780226100128.003.0009*

[55] Weiland, C., Yoshikawa, H. 2013. ''Impacts of a Prekindergarten Program on Children's Mathematics, Language, Literacy, Executive

Continued

The cost of implementing changes made by this proposed rule would vary depending on a Lead Agency's specific situation and implementation choices. ACF conducted a regulatory impact analysis (RIA) to estimate costs, transfers, and benefits of provisions in the proposed rule, considering current State and Territory practices. Due to limitations in data, we did not include Tribal Lead Agency practices in the RIA. We evaluated major areas of proposed policy change, including reduced co-payments, paying based on enrollment, paying the full subsidy rate, presumptive eligibility, and streamlined eligibility processes. Due to limited data related to children with disabilities in the relevant policy areas, for the purposes of this RIA, we did not conduct separate cost estimates specific to children with disabilities. Based on the calculations in this RIA, we estimate the quantified annual impact of the proposed rule to be about $303 million in transfers, $4.2 million in costs, and $21 million in benefits. Further detail and explanation can be found in the regulatory impact analysis.

Effective Dates.

ACF expects all provisions included in the proposed rule, if finalized, to become effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF review and approval of CCDF Plans, including Plan amendments; through Federal monitoring, including on-site monitoring visits as necessary; and through ongoing Federal oversight.

After the effective date of the final rule, any Lead Agency that does not fully meet the regulatory requirements would need to revise its policies and procedures to come into compliance, and file appropriate Plan amendments related to those changes. We recognize that some of the proposed changes in this NPRM may require action on the part of a Lead Agency's legislature or require State, Territory, or Tribal-level rulemaking to implement these changes. ACF welcomes public comment on specific provisions included in this proposed rule that may warrant a longer phase-in period and will take these comments into consideration when developing the final rule.

Severability.

The provisions of this NPRM, once it becomes final, are intended to be severable, such that, in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid. The changes address a variety of issues relevant to child care. None of the proposed rules contained herein are central to an overall intent of the proposed rule, nor are any provisions dependent on the validity of other, separate provisions.

II. Statutory Authority

This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act of 1990, as amended (42 U.S.C. 9857, *et seq.*), and section 418 of the Social Security Act (42 U.S.C. 618).

III. Discussion of Proposed Changes

The proposed revisions in this NPRM are organized thematically. The four main areas of proposed changes are: lowering families' costs for child care, improving parent choice to access care that meets their needs, strengthening payment practices to child care providers, reducing bureaucracy for better implementation, and implementing technical and other changes for improved clarity.

Lowering Families' Costs for Child Care (§§ 98.45, 98.33)

We propose changes to § 98.45 to make child care more affordable for families receiving child care subsidies under the CCDF program. Section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) and § 98.45(k) (as currently designated) require CCDF Lead Agencies to implement a system for cost sharing for participating families, commonly referred to as the parent or family co-payment, and the Act requires that such cost sharing cannot be ''a barrier to families receiving assistance,'' and regulations make clear that parent fees are a consideration in the Act's tenet that families participating in CCDF have equal access to child care as families that are not eligible for CCDF. Lowering families' child care costs is central to removing barriers and supporting equal access. High and unaffordable co-payments undermine parental choice in care and the goal of increasing the number and percentage of children in families with low incomes in high-quality child care settings, the very purposes of the Act. As previously noted, co-payments can limit families' access to child care that meets their needs.[56 57 58 59 60] Before the 2014 CCDBG reauthorization and 2016 CCDF final rule, the average family co-payment increased by a total of 3 percent (after adjusting for inflation) between 2005–2015.[61] Yet, in 2016, the average family co-payment increased by 8 percent (after adjusting for inflation) in just one year, suggesting that Lead Agencies may be transferring some of the cost burden associated with implementing the health, safety, and quality changes associated with the 2016 CCDF final rule to families.[62] From 2016–2021, the average family co-payment continued to increase by a total of 6 percent over those five years (after adjusting for inflation).[63] In sum, CCDF family co-payment amounts increased at a rate higher than inflation between 2005–2021, with an 18 percent increase (after adjusting for inflation) in average family co-payment during this period.[64] Given that co-payments serve as a barrier to CCDF-participating families, as compared to both CCDF-participating families when a co-payment is waived and higher-income families who do not receive CCDF, we propose to make changes to § 98.45 to reduce parent co-payments, as described below.

Function, and Emotional Skills.'' Child Development, 86(6), 2112–2130.

[56] National Survey of Early Care and Education Project Team (2022): Erin Hardy, Ji Eun Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022–05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). *https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.*

[57] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.*

[58] Scott, E.K., Leymon, A.S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. *https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.*

[59] Grobe, Deana & Weber, Roberta & Davis, Elizabeth & Scott, Ellen. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93–121. *https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.*

[60] Morrissey, Taryn W. (2017). ''Child care and parent labor force participation: a review of the research literature.'' *Review of Economics of the Household* 15.1: 1–24. *https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.*

[61] ASPE tabulations of the ACF–801 database. FY 2005 to FY 2018 were tabulated using the public-use files. FY 2019 to FY 2021 were tabulated using the restricted-use files. FY 2021 data were preliminary.

[62] Ibid.

[63] Ibid.

[64] Ibid.

Prohibit Family Co-Payments That Are a Barrier to Child Care Access

First, at § 98.45(b)(5), this NPRM proposes to establish that co-payments over 7 percent of a family's income are an impermissible barrier to a family receiving assistance, and family co-payments must therefore be no more than 7 percent of a family's income. Section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) establishes that Lead Agencies must not set co-payment policies that are a barrier to families receiving assistance. If a family receives CCDF for multiple children, the family's total co-payment amount would not exceed 7 percent of the family's income.

The preamble (81 FR 67515) of the 2016 CCDF final rule established 7 percent as the Federal benchmark as an affordable co-payment for families receiving CCDF but did not make it a mandatory ceiling. According to Federal fiscal year (FFY) 2022–2024 CCDF State plans, 14 Lead Agencies have set all their co-payments to 7 percent or less. Among the rest of Lead Agencies, co-payments rise as high as 27 percent of family income. High co-payments may mean that families cannot afford to participate in the CCDF program, and instead have to patch together informal, unregulated care that is less reliable and less expensive, less likely to meet children's developmental needs and leads to families cutting work hours or exiting the workforce entirely. We anticipate this proposed change at paragraph (b)(5) will improve family stability and economic well-being, better support stable parent employment, increase the choices CCDF-eligible families have for child care arrangements, and reduce a barrier to child care access.

It is important to note that this proposal does not decrease the amount paid to the child care provider, but rather, shifts some of the cost from families to Lead Agencies. Lead Agencies must continue to set payment rates at levels that provide equal access to care for families receiving child care subsidies, and OCC expects to closely monitor Lead Agency payment rates to ensure reductions in family co-payments do not lead to funding cuts for providers.

We request comment on whether 7 percent is the correct threshold, including data on child care affordability and the impact high co-payments may have on families' ability to access child care assistance.

Allow Lead Agencies To Waive Co-Payments for Additional Families

Second, we propose to amend § 98.45(l)(4), as redesignated, to explicitly allow Lead Agencies the discretion to waive co-payments for two additional populations—eligible families with income up to 150 percent of the Federal poverty level and eligible families with a child with a disability as defined at § 98.2. Current regulations allow Lead Agencies to waive co-payments for families in particular circumstances (*i.e.,* with incomes below the Federal poverty level, families in need of protective services or other factors as determined by the Lead Agency). The proposal would not alter the existing option that allows Lead Agencies to waive co-payments for families in need of protective services or to determine other factors for waiving co-payments. Lead Agencies currently have authority to define ''other factors''—such as family income between 100–150 percent of the Federal poverty level or having a child with a disability—for waiving copayments and will continue to have additional flexibility to define special populations eligible for waiving co-payments, including families who have incomes higher than 150 percent of the Federal poverty level. Lead Agencies have chosen to use this flexibility to categorically waive co-payments for certain vulnerable populations, including those who benefit from Temporary Assistance for Needy Families (TANF), children enrolled in Head Start, families experiencing homelessness, children in foster care, and teen parents. States' ability to waive co-payments for these children and families, and other factors determined by Lead Agencies, remains.

By proposing to allow Lead Agencies to waive co-payments for families with incomes up to 150 percent of the Federal poverty level, this proposal would make it easier for Lead Agencies to eliminate financial barriers that prevent parents with low incomes from utilizing CCDF to access high-quality child care settings for their children, and in turn support parents' ability to achieve economic well-being through education, training, and work opportunities. Co-payments (even very low co-payments) remain a barrier for some families to make ends meet, especially families struggling to afford housing costs.[65] [66] [67] Recognizing that families with incomes at or below 150 percent of the Federal poverty level are facing particular financial stress, providing this additional co-payment flexibility to Lead Agencies will help advance the purposes of the Act, including child and family well-being. Lead Agencies have acknowledged that families with low incomes in their jurisdictions are still struggling to afford child care, even when they receive child care subsidy.[68]

This policy should not be interpreted as discouraging states from taking steps to significantly reduce co-payments for those families who do not fall within one of the categories that allow for pre-approved waiving of co-payments, including waiving co-payments for families with incomes higher than 150 percent of the Federal poverty level. Lead Agencies may propose a higher threshold for waiving co-payments, at their discretion. While the statute does require that Lead Agencies establish a cost-sharing arrangement for families benefiting from assistance, it does not require more than a de minimis contribution from a family if that is how the state chooses to support eligible families. For instance, two Lead Agencies have co-payment policies in place according to their FFY2022–2024 CCDF State plans that ensure no CCDF family pays more than 2 percent of their income for co-payments. States may continue striving toward significantly reducing CCDF families' financial burden while adhering to the requirements under the law to establish a sliding fee scale. Section 658E(c)(3)(B) of the Act (42 U.S.C. 9858c(c)(3)(B)) requires Lead Agencies to prioritize services for ''children with special needs,'' and the 2014 Reauthorization strengthened this focus by requiring OCC to annually report on whether Lead Agencies use CCDF funds to prioritize serving children with special needs. Available data suggests that CCDF is

[65] Scott, E.K., Leymon, A.S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon. *https://health.oregonstate.edu/early-learners/research/assessing-impacts-oregon%E2%80%99s-2007-changes-child-care-subsidy-policy.*

[66] Grobe, Deana & Weber, Roberta & Davis, Elizabeth & Scott, Ellen. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. *Contemporary Perspectives in Family Research (6),* 93–121. *https://health.oregonstate.edu/sites/health.oregonstate.edu/files/sbhs/pdf/struggling-to-pay-the-bills-using-mixed-methods-to-understand-families-financial-stress-and-child-care-costs.pdf.*

[67] Anderson, T. et al. (January 2022). Balancing at the Edge of the Cliff: Experiences and Calculations of Benefit Cliffs, Plateaus, and Trade-Offs. Washington, DC: Urban Institute. *https://www.urban.org/research/publication/balancing-edge-cliff*

[68] Rohacek & Adams. (2017). Providers in the child care subsidy system. Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/95221/providers-and-subsidies.pdf*

serving a low percentage of children with disabilities. In FY 2020, all states plus the District of Columbia and three territories, reported that only an average of 2 percent of children served by CCDF were children with disabilities.[69] OCC believes this data is a significant underestimate based on findings from the U.S. Department of Education indicating 15 percent of the general population age three to 21 has a disability.[70]

Families with children with disabilities experience unique challenges to accessing appropriate child care options. According to the 2016 Early Childhood Program Participation Survey, 34 percent of parents with children with disabilities have trouble finding care, as compared to 25 percent of families with nondisabled children.[71] The survey data showed that these barriers to finding child care include as program costs, lack of available slots, concerns about safety and quality, and scheduling challenges resulting in need for multiple care arrangements at any one given time.[72] Allowing Lead Agencies to waive co-payments for families with children with disabilities provides Lead Agencies an additional tool to help meet the statutory requirement to prioritize serving children with special needs, which may include children with disabilities, and possibly make it easier for these families to benefit from CCDF. As proposed, the option to waive co-payments for eligible families with a child or children with disabilities would apply to the entire family, not just for the child with a disability.

We also propose to revise §§ 98.81(b)(6)(x) and 98.83(d)(1)(xi) to exempt all Tribal Lead Agencies from the requirement to establish a sliding fee scale and require parents to pay a co-payment as required at proposed redesignated § 98.45(l). Therefore, families served by Tribal Lead Agencies would not be required to pay co-payments. Currently, Tribes with medium and large allocations are subject to the requirements at § 98.45(l) while Tribes with small allocations have the flexibility to exempt all families from co-payments and implement categorical eligibility. Of the 265 Tribes receiving CCDF funds either directly through ACF or through the Bureau of Indian Affairs, 60 percent are tribes with small allocations. Extending this exemption from co-payments to Tribes with medium and large allocations would enable tribes whose traditional practices of caring for children may not include monetary contributions, to align their child care program with their cultural beliefs and supports tribal sovereignty.

We request comment on whether states would benefit from flexibilities providing the option to waive copays for other populations. We also request comments on potential additional categories of families for which co-payments could be waived under this proposed rule.

Consumer Education

Finally, to help ensure families are aware of co-payment policies, we propose to add a new requirement at § 98.33(a)(8) that states and territories must post information about their co-payment sliding fee scales. Section 658E(c)(2)(E) of the Act (42 U.S.C. 9858c(c)(2)(E)) requires Lead Agencies to collect and disseminate consumer education information that will promote informed child care choices to parents of eligible children, the public, and providers. Consumer education is a crucial part of parental choice because it helps parents better understand their child care options and incentivizes providers to improve the quality of their services. Since Congress expanded the focus on consumer education in the 2014 reauthorization of the Act, all states and territories have launched consumer education websites providing parents and the general public with critical information about child care in their community and improving transparency around the use of Federal child care funds. However, many of these websites still overlook key areas that impact family decisions around child care and applying for child care subsidies. For example, it remains difficult for parents in many communities to learn about co-payment rates and what their family might expect to pay, leaving some families unaware of the co-payment requirements. Therefore, we propose to add a requirement at § 98.33(a)(8) for Lead Agencies to post current information about their process for setting the sliding fee scale for parent co-payments, including policies related to waiving co-payments and estimated co-payment amounts for families at § 98.33(a)(8).

We request comment on the types of information related to co-payments that should be included and if there are other eligibility policies that should be added to the consumer education websites to improve access to the information parents need to make informed choices.

Improving Parent Choice in Child Care and Strengthening Payment Practices (§§ 98.16, 98.30, 98.45, 98.50)

As previously discussed, the availability of affordable high-quality child care that meets families' needs continues to lag well behind demand, and this inadequate supply makes it very difficult for families to afford and access high-quality child care that meets their needs, which subsequently harms labor force participation, family economic wellbeing, and healthy child development. Congress recognized the need to increase the supply of high-quality child care and included new requirements in the 2014 reauthorization for Lead Agencies to develop and implement strategies to increase the supply and quality of care for children in underserved communities, infants and toddlers, children with disabilities, and children in need of care during non-traditional hours (section 658E(c)(2)(M), 42 U.S.C. 9858c(c)(2)(M)). Yet Lead Agencies, providers, and parents continue to report significant struggles to find child care, and thin operational margins, low wages, and difficult job conditions remain significant barriers to grow the supply.

This NPRM proposes provisions to improve payment practices to child care providers so more providers will participate in the subsidy program, which in turn will increase parent choice in finding care that meets their needs. Prevalent payment practices in use in CCDF today can be destabilizing to providers and can disincentivize them from enrolling children who receive subsidies. Providers that do accept children who receive subsidies are incentivized to reduce costs further due to low or inconsistent subsidy payments, such as forgoing efforts to maintain or increase quality and enhance staff compensation. Correcting these detrimental payment practices is critical to the financial stability of child care providers and for helping families access high-quality child care that meets their needs.

[69] U.S. Department of Health and Human Services, Administration for Children and Families. (September 2022). Child Care and Development Fund (CCDF) Report on States' and Territories' Priorities for Child Care Services: Fiscal Year 2021. *https://www.acf.hhs.gov/occ/report/priorities-report-2021.https://www.acf.hhs.gov/occ/report/priorities-report-2021.* To some extent, the low percentage reflects data quality issues in the administrative data in some states.

[70] National Center for Education Statistics. (2022) Fast Facts: Students with Disabilities. U.S. Department of Education. *https://nces.ed.gov/fastfacts/display.asp?id=64.*

[71] Novoa, C. (2020). The child care crisis disproportionately affects children with disabilities, Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities*

[72] Ibid.

The proposed revisions in this section of the NPRM would require Lead Agencies to use grants and contracts to address the acute lack of supply for certain types of care. This section also proposes to support provider stability by requiring Lead Agencies pay providers prospectively and based on enrollment, as is standard practice for families who do not receive subsidies. Additionally, the proposed revisions in this section clarify that Lead Agencies may account for child care cost considerations and pay providers at the CCDF agency established payment rate approved in the Lead Agency's CCDF plan, even if it is above the providers' private pay price. These proposed revisions to payment practices will lead to improved program financial stability, higher-quality care, and increases in the supply of child care, all of which are essential to promoting parent choice in care.[73] [74] [75]

Building Supply With Grants and Contracts

To help address the far-reaching impact the lack of high-quality child care options has on child development, family well-being, and the economy, this NPRM includes proposals to improve payment rates and practices with the goals of increasing parents' choices in child care, reducing barriers to child care providers participating in the child care subsidy system, and ultimately increasing the supply of child care for families receiving subsidies.

First, we propose to make changes at §§ 98.16(y), 98.30(b), and 98.50(a)(3) as redesignated, to address the lack of supply of child care for underserved communities and populations that Lead Agencies must prioritize pursuant to the directives in the statute (section 658E(c)(2)(M), 42 U.S.C. 9858c(c)(2)(M)). We propose to require states and territories to provide some child care services through grants and contracts as one of many strategies to increase the supply and quality of child care, including at a minimum, using some grants or contracts for infants and toddlers, children with disabilities, and nontraditional hour care. We would specifically require some use of contracts for these populations because of the particularly stark supply issues that lead to minimal parent choice, but encourage lead agencies to also consider other populations that may benefit from grants or contracts.

Section 658E (c)(2)(A) of the Act (42 U.S.C. 9858c(c)(2)(A)) requires Lead Agencies to provide parents the option of enrolling with a child care provider that has a grant or contract for the provision of such services or to receive a certificate (also called a voucher). Grants and contracts represent agreements between the subsidy program and child care providers to designate slots for subsidy-eligible children. Sufficiently funded grants and contracts for direct services are more likely to increase stability for child care providers than certificates, helping them remain in business, and thereby maintaining or increasing the supply of child care. For example, an evaluation of an infant and toddler contracted slot pilot in Pennsylvania found that participating programs had greater financial stability than providers solely paid through certificates, increased classroom quality, and more stable enrollment for infants and toddlers receiving child care subsidies.[76] They also found evidence that providers had a greater ability to hire and retain qualified staff and establish better coordination between local and state systems. Georgia also used grants and contracts to build the supply of care for infants and toddlers, and providers reported an increase in enrollment of children from families who would have normally struggled to pay for care because those families could now access the child care subsidy because the program was able to connect the families with contract-funded subsidy.[77] They also reported that the higher reimbursement rate paid with the contracts was closer to the true cost of providing care and allowed providers to invest in quality improvements.

However, only 10 states and territories report using any grants and contracts for direct services, and only 6 states and territories report supporting more than 5 percent of children receiving subsidy via a grant or contract even though they can be one of the most effective tools to build supply in underserved areas and for underserved populations.[78] As discussed later in this NPRM, Tribal Lead Agencies are not subject to this proposal because of differences in their CCDF programs.

Finding child care for infants and toddlers, children with disabilities, and nontraditional hour care is particularly difficult for parents. Higher operational costs per child, the need for specialized training, and physical space needs generally make providing care for these populations more challenging and make supply issues particularly acute. For infants and toddlers, the potential demand far exceeds the available supply. A 2020 analysis of 19 states and the District of Columbia representing close to 40 percent of the U.S. population found that in 80 percent of the counties analyzed, there were at least three infants and toddlers for every child care slot for children under three.[79] For children with disabilities, data from the 2016 Early Childhood Program Participation Survey showed that 34 percent of parents of children with disabilities had at least some difficulty finding child care compared to 25 percent of parents of children without disabilities.[80] About a third of children under the age of 6 live with parents who work nontraditional hours, before 7 a.m. or after 6 p.m. on weekdays or on weekends, though this varies considerably by state.[81] Further, Black or African American and Hispanic or Latino families and families with lower incomes are disproportionately likely to work nontraditional hours.[82] In

[73] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. Washington, DC: New America. *https://www.newamerica.org/education-policy/briefs/make-child-care-more-stable-pay-by-enrollment/.*

[74] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/grants-contracts-strategy-building-supply-subsidized-infant-toddler-child-care/.*

[75] Greenberg, E. et all (2018). Are Higher Subsidy Payment Rates and Provider-Friendly Payment Policies Associated with Child Care Quality? Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/96681/are_higher_subsidy_payment_rates_and_provider-friendly_payment_policies_associated_with_child_care_quality_2.pdf.*

[76] Dorn, Chad. (August 2020). Infant and Toddler Contracted Slots Pilot Program: Evaluation Report. Pennsylvania Office of Childhood Development and Early Learning. *https://s35729.pcdn.co/wp-content/uploads/2020/11/IT-Pilot-Evaluation-Report_PA_Final.V2.pdf.*

[77] Sotolongo, J., et al. (May 2017). Voices from the Field: Providers' Experiences with Implementing DECAL's Quality Rated Subsidy Grant Pilot Program. Chapel Hill, NC: Child Trends. *https://www.decal.ga.gov/documents/attachments/VoicesFromtheField.pdf.*

[78] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-2.*

[79] The White House (March 2023). Economic Report of the President. *https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf.*

[80] Novoa, C. (2020). The child care crisis disproportionately affects children with disabilities. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities.*

[81] Schilder, D., et al. (August 2021). States Can Pursue Policies to Make Child Care More Accessible during Nontraditional Hours. Washington, DC: Urban Institute. *https://www.urban.org/urban-wire/states-can-pursue-policies-make-child-care-more-accessible-during-nontraditional-hours.*

[82] Adams, G., et al. (January 2021). To Make the Child Care System More Equitable, Expand Options for Parents Working Nontraditional Hours. Washington, DC: Urban Institute. *https://www.urban.org/urban-wire/make-child-care-*

Continued

the nationally-representative 2012 National Survey of Early Care and Education (NSECE) study, only 8 percent of center-based providers and only 34 percent of listed, home-based providers reported offering any type of care during nontraditional hours.[83] A 2020 study of six states found that only 37 percent of child care providers in these states offered care during nontraditional hours, with providers more likely to provide care in the early morning hours (4:30 a.m. to 7 a.m.) than during evening, overnight, or weekend hours.[84] A larger percentage of family child care providers offer nontraditional hour care than center-based programs [85] so the continued decrease in family child care providers may make it even more difficult for parents to find care during nontraditional hours.

Lead Agencies need clear data and strategies to address gaps in the supply of child care. However, current reporting requirements make it difficult to understand supply assessments. Therefore, we also propose to split the provision at § 98.16(x) into two provisions to improve reporting on strategies to meet the statutory requirement for Lead Agencies to take steps to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. At revised proposed paragraph (x), we continue to require Lead Agencies include in their CCDF plans a description of the supply of care, including identifying shortages in the supply of high-quality providers and a list of the data sources used to identify the shortages. At paragraph (y), we propose to require Lead Agencies to describe their strategies to increase the supply and improve the quality of child care services, which must include how the Lead Agency will use grants and contracts to build supply, whether the Lead Agency plans to use other mechanisms to build supply, such as alternative payment rates, how those mechanisms will address the supply shortage, and the method for tracking progress to increase the supply and support parental choice.

Sustainable Payment Practices

Second, to support child care provider stability, make it easier for providers to serve children with child care subsidies, and increase parent choices in care, we propose to amend § 98.45(m) to require Lead Agencies to implement payment policies that are consistent with the private-pay market. Specifically, we propose to require Lead Agencies to pay child care providers serving CCDF families prospectively and to either pay these child care providers based on a child's enrollment or an alternative equally stabilizing approach proposed by the Lead Agency and approved by the OCC in the Lead Agency's CCDF Plan.

Section 658E6(c)(2)(S) of the Act (42 U.S.C. 9858c(c)(2)(S)) requires Lead Agencies to certify that payment practices for child care providers receiving CCDF funds reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance to support provider stability and encourage more child care providers to serve children receiving assistance from CCDF. The Act also requires the Lead Agency, to the extent practicable, to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's attendance which includes occasional absences due to holidays or unforeseen circumstances, such as illness. In addition to payment rates, policies governing provider payments are an important aspect of equal access and support the ability of providers to provide high-quality care. Generally accepted payment practices for parents who pay privately for child care, which is most parents, require a set fee based on a child's enrollment, generally in advance of when services are provided.[86] Payments by parents who pay privately typically are not adjusted due to child absences.

This NPRM amends § 98.45(m)(1), as newly proposed, to require Lead Agencies to ensure timely provider payments by paying prospectively prior to the delivery of services to align with the Act's requirement that Lead Agencies use generally accepted payment practices. Prospective payment is the norm for families paying privately (*e.g.,* payment for child care for the month of February is due February 1st) because providers need to receive payment before services are delivered to meet payroll and pay rent. But according to the FY 2022–2024 CCDF States Plans, only eight states and territories pay providers prospectively. Current CCDF regulations allow lead agencies to pay providers within 21 days of receiving a completed invoice. This practice places an up-front burden on providers in serving CCDF families and makes it difficult for providers to accept child care subsidies; providers often mention delayed payments as a key reason why they do not participate in the CCDF program and that it has a destabilizing effect on child care operations.[87] This proposed change would also increase parent choice, making it easier for providers to accept subsidies and improving stability among child care providers serving children participating in CCDF.

At § 98.45(m)(2), as proposed, the NPRM deletes two of three current payment practice options at paragraph (m)(2)(ii), which allows for full payment if a child attends at least 85 percent of authorized time, and paragraph (m)(2)(iii), which allows for full payment if a child is absent five or fewer days a month, to require that Lead Agencies pay child care providers based on a child's enrollment rather than attendance at paragraph (m)(2)(i). Neither of the two options we propose to delete support a provider's fixed operational costs, continuity of care for children, or reflect the norm for families paying privately. This proposed change would also allow us to meet the Act's requirement to support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. All Lead Agencies would have the option to collect attendance information to ensure children are still enrolled in the program, but this would not impact the provider's payment.

Thirty-six states and territories report they pay based on enrollment not attendance. The fixed costs of providing child care, including staff wages, rent, and utilities, do not decrease if a child is absent, which is why private pay families are generally required to pay for a full week or month, regardless of

system-more-equitable-expand-options-parents-working-nontraditional-hours.

[83] National Survey of Early Care and Education Project Team (2015). Fact Sheet: Provision of Early Care and Education during Non-Standard Hours. (OPRE Report No. 2015–44). Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. Available at *http://www.acf.hhs.gov/programs/opre/research/project/national-survey-of-early-care-andeducation-nsece-2010-2014.*

[84] Child Care Aware of America. (March 2023). Who provides care for nontraditional-hours? Arlington, VA: Child Care Aware of America. *https://info.childcareaware.org/blog/nontraditional childcare.*

[85] Ibid.

[86] U.S. Department of Health and Human Services. Office of the Inspector General. (August 2019). States' Payment Rates Under the Child Care and Development Fund Program Could Limit Access to Child Care Providers (Report in Brief OEI–03–15–00170). *https://oig.hhs.gov/oei/reports/oei-03-15-00170.pdf.*

[87] Ibid.

whether their enrolled child is absent. Providers in states that pay based on attendance either absorb the lost revenue associated with a child's occasional absences or choose not to participate in the subsidy system and limit parent choices.

The Act and 2016 CCDF final rule require Lead Agencies to implement § 98.45(l)(2) ''to the extent practicable'' so in continuing policy set in the preamble of the 2016 CCDF final rule, we interpret this language as setting a limit on the extent to which Lead Agencies must act, rather than providing a justification for not acting at all (81 FR 67517). We propose to revise paragraph (l)(2) to require Lead Agencies who determine they cannot pay based on enrollment, describe their approach in the CCDF Plan, provide evidence that their proposed alternative reflects private pay practices for most child care providers in the state, territory, or tribe and does not undermine the stability of child care providers participating in the CCDF program. OCC expects to approve alternative approaches in only limited cases where a distinct need is shown.

We recognize that Lead Agencies may need additional flexibility in exceptional instances where a child care provider is suspected of fiscal mismanagement so we propose to add at § 98.45(m)(7) that Lead Agency payment practices may include taking precautionary measures when a provider is suspected of fraud. For example, it may be prudent in such cases for the Lead Agency to pay a provider retroactively as part of a corrective action plan or during an investigation.

These proposed changes are designed to align with generally accepted payment practices in the private child care market. We request comment on typical payment practices for families not receiving CCDF assistance and if there are other practices that may increase provider participation in the child care subsidy system.

Paying the Established Subsidy Rate

Finally, this NPRM proposes to codify at § 98.45(g) that Lead Agencies should strive to pay eligible child care providers caring for children receiving CCDF subsidies the Lead Agency's established subsidy rate in order to account for the actual cost of care, even if that amount is greater than the price the provider charges parents who do not receive subsidy. This proposal would promote equal access, increase parent options in care arrangements, and help increase the number and percentage of children from families with low incomes in high-quality child care settings, which is a central purpose of the Act. Lead Agencies may pay amounts above the provider's private pay rate to support quality and may peg a higher payment rate to the provider's cost of doing business at a given level of quality. Payments may exceed private pay rates if they are designed to pay providers for additional costs associated with offering higher-quality care or types of care that are not produced in sufficient amounts by the market. (81 FR 67514)

CCDF requires Lead Agencies to set child care provider payment rates based on findings from a market rate survey and narrow cost analysis or an alternative methodology to ensure children eligible for subsidies have equal access to child care services comparable to children whose parents are not eligible to receive child care assistance because their family income exceeds the eligibility limit. A market rate survey is the collection and analysis of prices and fees charged by child care providers for services in the priced market, and a narrow cost analysis estimates the true cost of care, not just price. Lead Agencies must analyze price and cost data together to determine adequate child care provider rates to meet health, safety, and staffing requirements and meeting these standards relies on child care providers receiving the full payment rate. OCC has strongly encouraged Lead Agencies to set payment rates high enough so that child care providers can retain a skilled workforce and deliver higher-quality care to children receiving subsidies and the policies can achieve the equal access standard required by law. The preamble to the 2016 CCDF final rule also restated the importance of setting higher payment rates and using the 75th percentile as a benchmark to gauge equal access for Lead Agencies conducting a market rate survey and says ''Established as a benchmark for CCDF by the preamble to the 1998 Final Rule (63 FR 39959), Lead Agencies and other stakeholders are familiar with [the 75th percentile] as a proxy for equal access.''(81 FR 67512)

OCC has prioritized the importance of increasing the percentile on which provider payment rates are based, and in April 2023 determined that any payment rates set at less than the 50th percentile were insufficient to meet the equal access requirements of CCDF. OCC noted that the 50th percentile is not an equal access benchmark, nor is it a long-term solution to gauge equal access, and thus may not be considered sufficient for compliance in future cycles. Increased provider payments are important for equal access, but, as stated above, the market rate survey alone is not enough information to set payment rates. The cost of care must be considered to set payment rates high enough to support high-quality child care for all children.

However, some Lead Agencies dictate the provider be paid less than the Lead Agency's established base payment rate to match the constrained price the provider charges parents paying privately. This policy subverts the CCDF requirement that payment rates promote parent choice and increase the number of children from families with low incomes in high-quality care. Particularly in low-income neighborhoods, private-pay prices are constrained by market rate prices that local families can afford to pay and do not reflect the true cost of care.[88] Because child care providers' *price* for services reflects what parents enrolling in their programs can afford and not necessarily the (higher) *cost* of providing services, the price is artificially constrained by affordability. Therefore, CCDF Lead Agencies may pay their full reimbursement rate when the unsubsidized price is lower.

Paying all CCDF providers at the CCDF agency established rate enables Lead Agencies to pay child care providers a rate that is closer to the true cost of child care, fosters parent choice, increases child care quality, and supports better child care supply. This is existing policy under rules and regulations of CCDF but because of its importance to achieving the main purposes of the Act, this NPRM proposes to codify it in the regulatory language to reduce confusion. OCC will provide additional guidance to Lead Agencies to support the policy.

Reducing Bureaucracy for Better Implementation (§ 98.21)

This NPRM proposes changes to lessen the burden on families seeking child care assistance, making it faster and easier for them to apply for and receive child care subsidies by clarifying ways that Lead Agencies can simplify subsidy eligibility determination, redetermination, and enrollment processes. The proposed revisions encourage strategies for Lead Agencies to expedite families' access to services by facilitating presumptive enrollment and encouraging an online application option. Additionally, the proposed revisions identify

[88] U.S. Department of the Treasury. (2021). The Economics of Child Care Supply in the United States. *https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.*

opportunities for Lead Agencies to streamline eligibility policies by leveraging eligibility information from other programs and to align family eligibility timelines. These provisions are designed to align with the Act's goal of providing families with continuity of care, which benefits child well-being and family economic security.

Too often, eligible families lose access to child care subsidies due to paperwork issues. This is why eligible families that lose access to child care subsidies often re-enter the program within a few months.[89] Parents with unpredictable work hours or limited control over their schedule are significantly more likely to lose child care subsidies,[90] and parents with low incomes are more likely to have irregular work hours than parents with higher incomes.[91] Further, families who chose to exit the program are three times more likely to do so during their redetermination month than at any other time.[92] These studies suggest that families miss out on benefits because of administrative challenges rather than issues with eligibility. Thus, to limit administrative burden on families, this NPRM proposes to clarify ways that Lead Agencies can simplify subsidy eligibility determination and enrollment processes.

Presumptive Eligibility

This NPRM proposes to amend § 98.21(e) and (h)(5) to clarify that, at a Lead Agency's option, a child may be considered presumptively eligible for subsidy prior to full documentation and verification of the Lead Agency's eligibility criteria and eligibility determination. This will help ensure timely access to reliable child care assistance and reduce burden on families. Presumptive eligibility is currently allowable under CCDF, but this NPRM establishes parameters for Lead Agencies that choose to implement presumptive eligibility with the goal of reducing barriers for Lead Agency uptake. Specifically, the proposal clarifies that Lead Agencies may define a minimum presumptive eligibility criteria and verification requirement for considering a child eligible for child care services for up to three months while full eligibility verification is underway. To be determined presumptively eligible, a child must be plausibly assumed to meet each of the basic Federal requirements, and at the Lead Agency's option the basic requirement defined in the Lead Agency's CCDF Plan, in accordance with § 98.20 (*i.e.,* age; income; qualifying work, education, or training activity or receiving or needing to receive protective services; and child citizenship). Lead Agencies have the flexibility to collect minimal information to determine presumptive eligibility and are not required to fully verify the simplified eligibility information.

The proposal further specifies that CCDF payments may be made for presumptively eligible children and those payments will not be considered an error or improper payment if a child is ultimately determined to be ineligible and will not be subject to disallowance, except in cases of fraud or intentional program violation. However, Lead Agencies would be required to implement a minimum verification process that incorporates criteria that reduces the likelihood of error and fraud. Lead Agencies must track the number of presumptively eligible children who turn out to be ineligible and adjust their presumptive eligibility processes accordingly to ensure funds are safeguarded for eligible children. In addition, Lead Agencies would be required to describe their presumptive eligibility policies and procedures in their CCDF Plans.

The application process can be slow and difficult for families to navigate, delaying or preventing families from accessing high-quality child care;[93] derailing or delaying employment, education, or training; and impeding families' economic wellbeing.[94] As children and families go through periods of challenge or transition, timely access to reliable and affordable care is especially critical. This includes when parents begin a new job or training program, experience changes in earnings or work hours, move to a new area, or lose access to an existing care arrangement, which some families report are the circumstances that bring them to first apply for CCDF subsidies.[95] Some Lead Agencies require multiple weeks or even months of pay stubs to verify employment.[96] For individuals just beginning a new job, this can create a long and untenable delay in accessing affordable child care. Even after submitting the substantial paperwork required to apply for CCDF subsidies, families may wait another month or longer for the Lead Agency to verify and approve eligibility.[97] Barriers to accessing child care assistance leave parents with difficult choices. For example, parents may be forced to choose between delaying the start of a new job, forgoing a job opportunity altogether, or paying for care that is either unaffordable, unregulated, or lower quality. These choices, in turn, may lead to disruptions in parental employment, lost wages, financial risk, or disruptions in the continuity of care essential for supporting young children's development,[98] which is antithetical to the purposes of CCDF.

Presumptive eligibility is an important tool Lead Agencies can use to reduce burden on families and ensure timely access to reliable child care assistance. Lead Agencies already have the flexibility to implement presumptive eligibility policies. However, Lead Agencies may have been dissuaded from implementing presumptive eligibility because of a lack of clarity under current policy leading to concerns that payments made with CCDF funds for any child that is ultimately determined to be ineligible

[89] Grobe, D., Weber, R. B., & Davis, E. E. (2008). Why do they leave? Child care subsidy use in Oregon. *Journal of Family and Economic Issues. https://health.oregonstate.edu/sites/health.oregonstate.edu/files/early-learners/pdf/research/why_do_they_leave_-_child_care_subsidy_use_in_oregon_-_published_article.pdf.*

[90] Henly, J. et al. (August 2015). Determinants of Subsidy Stability and Child Care Continuity: Final Report for the Illinois-New York Child Care Research Partnership. Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/65686/2000350-Determinants-of-Subsidy-Stability-and-Child-Care-Continuity.pdf.*

[91] Golden, Lonnie. (April 2015). Irregular Work Scheduling and Its Consequences. Washington, DC: Economic Policy Institute. *https://www.epi.org/publication/irregular-work-scheduling-and-its-consequences/.*

[92] Grobe, D., Weber, R. B., & Davis, E. E. (2008). Why do they leave? Child care subsidy use in Oregon. *Journal of Family and Economic Issues. https://health.oregonstate.edu/sites/health.oregonstate.edu/files/early-learners/pdf/research/why_do_they_leave_-_child_care_subsidy_use_in_oregon_-_published_article.pdf.*

[93] Adams, G., & Matthews, H. (2013). Confronting the child care eligibility maze: Simplifying and Aligning with other work supports. Washington, DC: Center for Law and Social Policy. *https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/WSS-CC-Paper.pdf.*

[94] Adams, G., Snyder, K., & Banghart, P. (2008). Designing subsidy systems to meet the needs of families: An overview of policy research findings. Washington, DC: Urban Institute. *https://www.urban.org/research/publication/designing-subsidy-systems-meet-needs-families.*

[95] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.*

[96] CCDF Policies Database, 2020 data. *https://ccdf.urban.org/.*

[97] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.*

[98] Adams, G., Snyder, K., & Banghart, P. (2008). Designing subsidy systems to meet the needs of families: An overview of policy research findings. Urban Institute. *https://www.urban.org/research/publication/designing-subsidy-systems-meet-needs-families.*

for reasons other than fraud or intentional program violations may be considered improper payments.

Evidence suggests presumptive eligibility can be implemented with relatively low levels of financial risk, and the potential benefits for families are substantial. For example, Montana and Delaware have implemented presumptive eligibility in their CCDF programs. Families reported that presumptive eligibility was important for obtaining the required paystub for a job they had just started and that providers were more willing to enroll children because payments were already guaranteed. Notably, pilot tests of Montana's and Delaware's approach to presumptive eligibility for CCDF showed that Lead Agencies can effectively set criteria that minimize the possibility children will later be found ineligible.[99] For example, Delaware grants presumptive eligibility based on available system criteria (*e.g.,* parent work status, income, family size) and any other available documentation that indicates children are likely to be eligible. In addition, both states' systems are designed to automatically close cases at the end of the presumptive eligibility period, if eligibility is not determined, to reduce the likelihood of improper payments—with an added benefit of reducing administrative burden on the Lead Agency.

The proposed change at § 98.21(e) allows Lead Agencies to use presumptive eligibility to provide quicker access to child care assistance for families with urgent needs, while reducing perceived financial risk and administrative burden by clarifying that CCDF funds may be used to cover presumptive eligibility payments if appropriate safeguards are in place. The proposed policy further reduces financial risk by requiring Lead Agencies to limit the presumptive eligibility period to three months, to set presumptive eligibility criteria and minimum verification requirements that ensure families receiving care during a period of presumptive eligibility are feasibly eligible and minimize the likelihood that they are later found to be ineligible for CCDF, and to track number of ineligibilities and adjust their presumptive eligibility processes accordingly. We note that the proposed three-month period is a maximum presumptive eligibility period. Lead Agencies are required to end assistance for families once they are determined to be ineligible, even if that determination is completed in under three months. As proposed in § 98.21(e), Lead Agencies must also maintain an improper payment rate that does not exceed the threshold established by the Secretary to implement presumptive eligibility using CCDF funds.

A related change at § 98.21(a)(5)(iv) is proposed to allow Lead Agencies to discontinue assistance prior to the end of the minimum 12-month eligibility period in cases where a period of presumptive eligibility ends with a failure to determine eligibility due to the family not completing required eligibility processes, such as providing required paperwork. Likewise, Lead Agencies have discretion to determine the processes and documentation required for eligibility verification and can consider ways to minimize the time to process applications, thereby reducing the length of the presumptive eligibility.

When children are newly added to the case of a family already participating in the subsidy program (*e.g.,* new siblings), Lead Agencies may implement presumptive eligibility while waiting for necessary additional information (*e.g.,* proof of relationship, provider payment information), but, as discussed below, ACF recommends that Lead Agencies leverage existing family eligibility verification as much as possible to determine the new siblings' full eligibility and add the additional children to the program.

We are requesting comment on whether three months is an appropriate length of time for presumptive eligibility. We welcome data on the average amount of time taken to process applications.

Eligibility Verification

This NPRM proposes to clarify at § 98.21(g) as redesignated, certain options Lead Agencies have to simplify eligibility verification. Families receiving child care assistance are likely to be receiving services from other benefits programs [100] and since research finds that administrative burden reduces uptake and continuation of services,[101] it would be beneficial for states, territories, and tribes to design service-delivery systems in ways that connect families with the programs they need with the least parent and administrative burden possible. Twenty-three states and territories currently use documentation from and enrollment in other benefit programs to determine CCDF eligibility for at least one eligibility component, based on data from the FFY2022–2024 CCDF Plan.

This NPRM proposes to clarify in § 98.21(g)(1) and (2), as redesignated, that Lead Agencies have flexibility to use a family's enrollment in other public benefits program or documents or verification used for other benefit programs to verify eligibility for CCDF, where appropriate. As currently allowable under the 2016 CCDF final rule, Lead Agencies can use enrollment in other benefit programs to satisfy specific components of CCDBG eligibility without additional documentation (*e.g.,* income eligibility, work, participation in education or training activities, or residency) or satisfy CCDBG eligibility requirements in full if eligibility criteria for other benefit programs is completely aligned with CCDBG requirements. For example, income eligibility for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), and Head Start/Early Head Start (42 U.S.C. 9831 *et seq.*) meet the Federal CCDF income eligibility requirements and enrollment in either program could demonstrate income eligibility for CCDF without any additional documentation from a family. Due to state, territory, and Tribal variability in eligibility thresholds by individual benefit programs, the first step to streamlining eligibility is for Lead Agencies to use their own jurisdiction-specific information on income eligibility to determine if a child is eligible for subsidy based on enrollment in that other program.

Allowing Lead Agencies to use enrollment in other benefit programs to verify CCDF eligibility will reduce duplication of effort on the part of families and streamline the eligibility determination process for Lead Agencies, thereby reducing burden on both sides. The proposal would support the well-being of children by clarifying a policy option Lead Agencies can employ to reduce the amount of time families may have to wait to access child care services while Lead Agencies process eligibility determinations that are redundant to determinations made by other benefit programs. Collaboration and coordination with other benefit programs is one key way to simplify eligibility determinations and ensure families can access all available benefits. This aligns with past OCC information memoranda which have encouraged Lead Agencies to consider cross-enrollment for multiple benefit

[99] Ibid.

[100] Ibid.

[101] Schweitzer, J. (May 2022). How To Address the Administrative Burdens of Accessing the Safety Net. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/how-to-address-the-administrative-burdens-of-accessing-the-safety-net/.*

programs [102] and streamline eligibility processes through information sharing with other benefit programs.[103]

In § 98.21(g)(2), this NPRM proposes to clarify that Lead Agencies are permitted to examine eligibility criteria of benefit programs in their jurisdictions to predetermine which benefit programs have eligibility criteria aligned with CCDF. Once programs are identified as being aligned with CCDF income and other eligibility requirements, Lead Agencies would have the option to use the family's enrollment in such public benefit program to verify the family's CCDF eligibility according to § 98.68(c).

Application Processes

To make it easier for eligible families to access child care services, we propose a change at § 98.21(f)(1), as redesignated, to require Lead Agencies implement eligibility policies and procedures that minimize disruptions to parent employment, education, or training opportunities to the extent practicable. Policies that lessen the burden of CCDF administrative requirements on families applying for child care assistance in turn improves access to child care and can improve families' economic wellbeing. Evidence suggests the initial CCDF eligibility determination process remains difficult, confusing, and overly burdensome for some parents and poses a barrier to accessing affordable child care for families with low incomes.[104] Burdensome application processes discourage families from applying for child care assistance, delay access to child care, and can cause substantial stress to parents.[105] Parents report that some of the biggest challenges are long waits at inconvenient times to apply in-person and gathering and submitting the necessary documents.[106] Not surprisingly, parents also report that online application options can be more convenient, less stressful, and prove especially useful in reducing the burden of document submission.

Thus, ACF recommends that Lead Agencies implement these strategies to reduce the administrative burden for families and, at a minimum, offer both paper and online applications to implement this important strategy that can ease access to child care and strengthen family economic wellbeing. Currently, 33 states offer online subsidy applications.

However, as Lead Agencies assemble online applications, they must take care to reduce the burden on families in applying for CCDF assistance. Merely converting the paper application process to one that is performed online will not yield benefits for families. As Lead Agencies create online applications, they should adjust their policies and procedures, as necessary, to address any undue burden placed on families in seeking assistance. One method of approaching this is documented in the model application, which includes practices for defining, collecting and verifying eligibility information, that the Office of Child Care developed and released in 2022.[107]

Additionally, as Lead Agencies consider easing the burden on families in seeking assistance under CCDF, they are encouraged to develop screening tools to help families determine whether they are eligible for CCDF assistance, or other publicly available benefits (*e.g.,* TANF or Supplemental Nutrition Assistance Program (SNAP)) and then link directly to applications for these programs.[108]

Additional Children in Families Already Receiving Subsidies

We propose new language at § 98.21(d) to clarify that the minimum twelve-month eligibility requirement described in § 98.21(a) applies when children are newly added to the case of a family already participating in the subsidy program. This proposal does not reflect new policy, as section 658E(c)(2)(N) (42 U.S.C. 9858c(c)(2)(N)) and § 98.21(a) do not provide exceptions to the 12-month minimum eligibility requirement. However, because the existing regulations do not explicitly address this scenario, there has been inconsistent implementation of the requirement in which additional children (*e.g.,* newborn or school age child needing after school care) in the family have not received 12 months of care before redetermination. Therefore, we propose to codify the requirement to address confusion around the policy.

In cases where multiple children in the same family have initial eligibility determined at different points in time, we would encourage Lead Agencies to align eligibility periods to the new child's eligibility period so that all the children's re-determinations can occur at the same point in time to limit burden on the family and the Lead Agency. This can be done by extending the eligibility period for the existing child beyond 12 months. We emphasize that 12 months is a minimum requirement and Lead Agencies can extend eligibility periods longer than 12 months. OCC has recommended extending eligibility periods beyond 12 months in other cases, such as to align re-determination with other benefit programs like the Early Head Start-Child Care partnerships. A conforming change is proposed at § 98.16(h)(4) to require Lead Agencies to describe their policy related to additional children in the CCDF plan. It is not ACF's intention for Lead Agencies to implement a full determination and recommends leveraging existing family eligibility verification about the family and requiring only necessary information (*e.g.,* proof of relationship, provider payment information) to add the additional child to the program.

Implementing Technical and Other Changes for Improved Clarity

Definitions—§ 98.2

We propose three technical changes to definitions at § 98.2 and the addition of two new definitions. In this section, italics indicate defined terms. First, we propose to amend the definition of *major renovation* to be based on cost and not based on a description of structural change. Section 658F(b) of the CCDBG Act (42 U.S.C. 9858d(b)) prohibits states and territories from using CCDF funds for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility, but it does not define major or minor renovations. The current definition for *major renovation* was established in the 1998 CCDF regulation and focuses on

[102] CCDF–ACF–IM–2016–02: 2014 Child Care Reauthorization and Opportunities for TANF and CCDF, *https://www.acf.hhs.gov/sites/default/files/documents/occ/ccdf_acf_im_2016_02.pdf.*

[103] CCDF–ACF–IM–2011–06: Policies and Practices that Promote Continuity of Child Care Services and Enhance Subsidy Systems, *https://www.acf.hhs.gov/sites/default/files/documents/occ/im2011_06.pdf.*

[104] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.*

[105] Adams, G., Snyder, K., & Banghart, P. (2008). Designing subsidy systems to meet the needs of families: An overview of policy research findings. Washington, DC: Urban Institute. *https://www.urban.org/research/publication/designing-subsidy-systems-meet-needs-families.*

[106] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.*

[107] *https://childcareta.acf.hhs.gov/full-model-application.*

[108] *See, e.g.,* Meade, E., Gillibrand, S., & Weeden (2023). Lost in the Labyrinth: Helping Parents Navigate Early Care and Education Programs, Washington, DC: New America Foundation. *https://www.newamerica.org/new-practice-lab/briefs/lost-in-the-labyrinth-helping-parents-navigate-early-care-and-education-programs/.*

the type of change, specifically whether it is a structural change or would significantly alter the facility.[109] The preamble to the 1998 final rule notes that the definition mirrored that used by the Head Start program (63 FR 39980) at the time, and Head Start's definition has since been modified to be cost-based. The definition from the 1998 child care rule has led to confusion in the field and inconsistent guidance for Lead Agencies and child care providers. Therefore, we propose changing the definition of *major renovation* to be based on the cost of renovations for better clarity and consistent implementation. Specifically, we propose setting the threshold at $250,000 for centers and $25,000 for family child care homes in recognition that costs will vary based on the size of the child care program, with annual adjustments based on inflation that will be posted on the OCC website. Any individual renovation or collective renovations exceeding these amounts would be considered major renovations. We also propose including language clarifying that renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a collective group of renovation activities. This proposed change aligns with changes being proposed to the Head Start Performance Standards. We are specifically seeking comment on whether these are the appropriate thresholds for defining *major renovation* and whether the definition should be annually adjusted to account for inflationary growth. This proposed definition applies to all CCDF Lead Agencies. Tribes may continue to request to use their CCDF funds for construction and major renovation. (Section 658O(c)(6), 42 U.S.C. 9858m(c)(6)) The proposed definition will be used to determine which projects are considered major renovation and require approval from ACF in accordance with § 98.84(b).

We also propose to add a definition of *Territory* to mean ''the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.'' This proposed new definition aims to streamline the CCDF regulations, particularly where Territory funding and allocations are discussed. We propose a conforming change to the definition of *State* to mean ''any of the States and the District of Columbia and includes Territories and Tribes unless otherwise specified''.

[109] 63 FR 39980 (*https://www.govinfo.gov/content/pkg/FR-1998-07-24/pdf/98-19418.pdf*).

We also propose to update definitions associated with changes made to CCDF mandatory and matching funds in the American Rescue Plan (ARP) Act of 2021 (Pub. L. 117–2). Section 9801 of the ARP Act amended section 418 of the Social Security Act ((42 U.S.C. 618(a)(3)) by permanently increasing the matching funding for states (including the District of Columbia) and changing the tribal set-aside for mandatory funds from between 1 and 2 percent of funds to a flat $100 million each fiscal year (*see* CCDF–ACF–IM–2021–04). In addition, the ARP Act appropriated CCDF mandatory funds ($75 million) to territories for the first time. To revise the CCDF regulation with the new territory mandatory funding statute, we propose to add a new definition for *Territory mandatory funds* at § 98.2 to mean ''the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories'' and revising the definition for *Tribal mandatory funds* to be ''the child care funds set aside at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations.''

Section 98.13—Applying for Funds

We propose a technical change at § 98.13(b)(4) to change the regulatory citation from 45 CFR 76.500 to 2 CFR 180.300 to accurately reflect current regulations at 2 CFR 180.300 governing grants management.

Section 98.16—Plan Provisions

We propose to revise § 98.16(h) to align with corresponding proposed changes at § 98.21. These proposed changes require lead agencies to describe in their CCDF plans their processes for incorporating additional eligible children in families already receiving subsidies, as proposed at § 98.21(d); their procedures and policies for presumptive eligibility, as proposed at § 98.21(e); and their processes for using eligibility for other programs to verify eligibility for CCDF, as proposed at § 98.21(g). These proposed policy changes are discussed earlier in this preamble.

We also propose a technical change at § 98.16(dd) as redesignated. The current regulatory language incorrectly says, ''verity eligibility.'' This is an error and should read ''verify eligibility.''

Section 98.21—Eligibility Determination Processes

We propose to add the word ''on'' in § 98.21(a)(2)(iii) to correct a grammatical error. The revised language would read, ''If a Lead Agency chooses to initially qualify a family for CCDF assistance based *on* a parent's status of seeking employment or engaging in job search,'' (emphasis added).

Section 98.33—Consumer and Provider Education

We propose a new provision at § 98.33(a)(4)(ii) to clarify which reports Lead Agencies must post on consumer education websites to address Lead Agencies' confusion about existing requirements. Section 658E(c)(2)(D) of the Act (42 U.S.C. 9858c(c)(2)(D)) requires monitoring and inspection reports of child care providers be made available electronically to the public. Current regulations at § 98.33(a)(4) require Lead Agencies to post ''full monitoring and inspection reports, either in plain language or with a plain language summary,'' but the regulation does not define a ''full monitoring and inspection report.'' This lack of clarity has led to varied implementation of the requirement, with many Lead Agencies only posting violations. While it is critical for parents to be aware of how a provider did not meet a health and safety requirement, it is also critical for parents to understand the full scope of a monitoring inspection, so parents have the information they need to make informed child care decisions. We propose to redesignate § 98.33(a)(4)(ii) through (iv) accordingly without changes.

We also propose to amend paragraph (a)(5) to include the total number of children in care as a required component of the CCDF consumer education website. Current regulations at § 98.33(a)(5) require Lead Agencies to post the aggregate number of deaths and serious injuries by provider type and licensing status, and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers, on the state or territories child care website. Lead Agencies are also required to post the total number of children in care by provider category and licensing status. However, the requirement to include the total number of children in care by provider category/licensing status was only included in the preamble to the 2016 CCDF final rule and not the regulatory language itself (81 FR 67477). This omission has led to a lack of clarity in monitoring Lead Agency compliance. Including the total number of children in care by type of care provides helpful context for parents and the public to understand the aggregate data on serious injuries and fatalities in child care settings. Lead Agencies are already required to include this information on their websites, so we do not expect this

proposed change to the regulatory text to be an additional burden. To ensure clarity, we propose to separate the existing requirements in paragraph (a)(5) into multiple subprovisions but without change.

Criminal Background Checks—§ 98.43

Section 98.43 details CCDF's comprehensive background check requirements, policies, and procedures. We propose three changes to clarify existing requirements regarding criminal background checks. First, we propose a change at § 98.43(a)(1)(i) and (d)(3)(i) to clarify the requirement that employment eligibility decisions must be made based on results of background checks and not after initiating all checks. Second, we propose to clarify at § 98.43(c)(1) it is the role of the State, Territory, Tribe, and Lead Agency to determine a prospective staff member's eligibility for employment, coordinating across relevant public agencies as necessary, such as state child welfare offices and the State Identification Bureau. Currently, some states use procedures that allow child care providers to make employment determinations for some parts of the background check requirements, and this is not allowable under the 2016 CCDF final rule. As proposed, the Lead Agency must provide the results of the background check to the child care provider in a statement that indicates only whether the staff member is eligible or ineligible, without revealing specific disqualifying information.

Third, we propose a change at § 98.43(c)(1)(v) to clarify that all adjudications for child pornography are disqualifying for child care employment. The Act requires Lead Agencies to find individuals ineligible for employment if they have been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography. Some Lead Agencies interpreted this to mean that a misdemeanor charge of child pornography had to be considered ''violent'' to be classified as a mandatory disqualifying offense under the Act. The proposed change clarifies that a standard misdemeanor involving child pornography is considered a disqualifying crime under the Act, whether considered ''violent'' or not.

Child Care Services—§ 98.50

Section 98.50(b)(1) reflects section 658G(a)(2)(A) of the Act (42 U.S.C. 9858e(a)(2)(A)), which includes a phased-in increase to the percent of expenditures states and territories must spend on activities to improve the quality of child care. The phase-in ended on September 30, 2020, so we propose to delete the phase-in schedule for the quality set-aside at § 98.50(b)(1) because it is outdated. This proposal does not impact the current requirement for states and territories to spend at least 9 percent of their total expenditures, not including state maintenance of effort funds, on quality activities.

Similarly, we propose to strike § 98.50(b)(2) because it is outdated. Section 658G(a)(2)(B) of the Act (42 U.S.C. 9858e(a)(2)(B)) included a new permanent requirement for states and territories to spend at least 3 percent of total expenditures (not including state maintenance of effort funds) on activities to improve the quality and supply of child care for infants and toddlers but delayed the effective date of this requirement until FY 2017. This date is no longer necessary in the regulatory language, and we propose to delete it. This proposal does not impact the current requirement for states and territories to spend at least 3 percent of their total expenditures (not including state maintenance of effort funds) on activities to improve the quality and supply of child care for infants and toddlers.

We also propose to amend § 98.50(e) to update regulations to align them with policies implemented by ACF in FY 2021 after changes made to section 418 of the Social Security Act (42 U.S.C. 618), as part of the American Rescue Plan Act of 2021 (Pub. L. 117–2). In accordance with Public Law 117–2, Territories received permanent CCDF mandatory funds for the first time in FY 2021. Given statute did not provide Territories with CCDF mandatory funds prior to FY 2021, the current CCDF regulations do not include requirements of how Territories must spend CCDF mandatory funds. We propose this change to codify the requirement included in the approved instructions for completing to the ACF–696 Financial Reporting Form for CCDF State and Territory Lead Agencies [110] that Lead Agencies spend at least 70 percent of CCDF mandatory and matching funds on specific populations related to TANF receipt (families receiving TANF, families transitioning from TANF, and families at-risk of becoming dependent on TANF) applies to Territories, as well as States. This requirement is aligned with statutory requirements and has applied to Territories since they first received mandatory funds in FY 2021. The proposed regulatory change simply codifies the requirement.

Availability of Funds—§ 98.60

To reflect that Territories began receiving annual mandatory funds in FY 2021 due to provisions in the American Rescue Plan (ARP) Act, we propose to make two conforming changes at § 98.60(a) to specify where the regulations address mandatory funds for states and where they address mandatory funds for Territories.

We also propose a conforming change at paragraph (d)(3) to clarify that Territories must obligate mandatory funds in the fiscal year in which they were granted and must liquidate no later than the end of the next fiscal year. This aligns with CCDF State policy and is needed to clarify new requirements added in the ARP Act. The existing provisions at paragraphs (d)(4) through (8) would be renumbered accordingly.

Allotments From the Mandatory Fund—§ 98.62

We propose a conforming change at § 98.62(a) to align this regulation with previously discussed changes made to the Social Security Act in the ARP Act. We propose to update the statutory reference to the Social Security Act to specify the provision referenced section 418(a)(3)(A), and we propose to delete the reference to the amount reserved for Tribes pursuant to paragraph (b) to reflect that the ARP Act permanently changed the allocation of mandatory funds for Indian Tribes and Tribal organizations to be based on the amount set at section 418(a)(3)(B) of the Social Security Act and no longer a percent of the total allocated.

Finally, we also propose to add a new paragraph (d) to incorporate changes made in the ARP Act allocating mandatory funds to the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Marianas Islands. Section 418(a)(3)(C) of the Social Security Act requires funds to be allocated based on the Territories' ''respective needs.'' In allotting these funds in FY 2021, ACF used the same formula used to allocate funds from the Discretionary funds at § 98.61(b). We propose to codify that reallotment formula in the regulations. Specifically, we propose that the amount of each Territory's mandatory allocation be based on (1) a Young Child factor—the

[110] Instruction for Completion of Form ACF–696 Financial Reporting Form for the Child Care and Development Fund (CCDF) State and Territory Lead Agencies. Office of Management and Budget (OMB) #0970–0510. *https://www.acf.hhs.gov/sites/default/files/documents/occ/instructions_for_completion_of_form_acf-696_financial_reporting_form-for_ccdf_state_territory_lead-agencies.pdf.*

ratio of the number of children in the Territory under five years of age to the number of children under five years of age in all Territories included; and (2) an Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the territory. Proposed § 98.62(d)(2)(i) requires per capita income to be equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time the determination is made and determined every two years.

Reallotment and Redistribution of Funds—§ 98.64

We propose to update § 98.64(a) to reflect that Territories began receiving mandatory funds in FY2021 due to the ARP Act. We propose to specify Territory mandatory funds are subject to redistribution and that mandatory funds granted to Territories must be redistributed to Territories. We also propose to specify that only Discretionary funds awarded to Territories are not subject to reallotment and that Discretionary funds granted to the Territories that are returned after being allotted are reverted to the Federal Government. We also propose to add a new paragraph (e) to codify these procedures for redistributing Territory mandatory funds.

Contents of Reports—§ 98.71

This NPRM proposes to delete the data element at § 98.71(a)(11) that requires Lead Agencies to report any amount charged by a child care provider to a family receiving CCDF subsidy more than the co-payment set by the Lead Agency in instances where the provider's price exceeds the subsidy payment amount because it would be unreasonably burdensome on parents and providers. We also propose conforming renumbering changes to existing paragraphs (a)(12) through (22). This reporting requirement was added to the CCDF regulations in 2016, but it was never added as a data element to the ACF–801 (monthly case-level report) because when ACF proposed adding the data element to the ACF–801 as part of the Paperwork Reduction Act (PRA) process in 2018, five State CCDF Lead Agencies submitted comments objecting to the proposed new data element. Four states indicated that the elements would create a reporting burden for families and/or providers, and that it would be challenging to collect and report accurate data. Another state indicated that it has legacy systems that would be unable to calculate or report the data. A State argued that the new elements were duplicative of information that States are required to report in their CCDF Plans, and would involve significant costs, especially for States with county-administered CCDF programs. We seek comment on whether this requirement should be removed, including the potential implications of instituting, or removing this reporting requirement.

Subpart I—Indian Tribes

In FY 2023, 265 Tribal Lead Agencies received CCDF grants totaling $557 million.[111] Prior to the 2016 CCDF final rule, Tribal Lead Agencies were divided into two categories: Those with allocations of more than $500,000 that were required to operate a certificate program for direct services, and those with an allocation under $500,000 that were exempt from administering a certificate program. Otherwise, prior to 2016, Tribal Lead Agencies largely operated under the same rules as States and territories. The 2016 CCDF final rule created three categories of Tribal Lead Agencies based on whether they had a small (less than $250,000), medium ($250,000 to $1 million), or large (more than $1 million) allocation. Tribal Lead Agencies with small allocations operate under a more limited number of CCDF requirements, may choose not to provide direct services, and may submit an abbreviated CCDF plan. Tribal Lead Agencies with medium and large allocations must meet more requirements and must provide direct services. There are some CCDF requirements from which all Tribal Lead Agencies are exempt, such as the requirement to have a child care consumer education website.

All the proposed changes in this NPRM would apply to medium and large allocation tribes, with the exception of the requirement to use grants and contracts to build supply, as described below. We propose a change to the liquidation period for major renovation and construction, which is only applicable to Tribal lead agencies because states and territories may only use CCDF funds for minor renovations.

We recognize that some existing regulatory requirements for Tribal lead agencies may not be appropriate for Tribal lead agencies or provide the flexibility necessary for Tribal lead agencies to implement CCDF programs in a way that meets the needs of the children, families, and child care providers in their jurisdiction. We also recognize that any significant changes made to Tribal regulations must be made with input and consultation with the Tribal Nations and organizations that receive CCDF funding. Therefore, we will separately release a Request for Information to begin a consultation with Tribal Lead Agencies and other Tribal stakeholders on areas where more flexibility would help improve implementation of the CCDF program. We will also seek feedback on some of the thresholds that are not regulatory but were set or updated in the preamble to the 2016 CCDF final rule, including the tribal allocation thresholds and discretionary base amounts.

Grants and contracts. As part of this NPRM, we propose to add new requirements at §§ 98.16(y)(1), 98.30(b)(1), and 98.50(a)(3), for states and territories to use grants and contracts for direct services to increase the supply of child care for infants and toddlers, children with disabilities, and children who need care during nontraditional hours, but we propose to exempt all Tribal Lead Agencies from these requirements. Tribal Lead Agencies vary significantly in how they administer the CCDF subsidy program, including with many tribal lead agencies operating their own child care programs with CCDF funds. Therefore, a requirement to use grants and contracts would not be feasible though it remains an option for those Tribal Lead Agencies that would like to use this funding mechanism. Tribal Lead Agencies would still be required to take steps to address and report on supply gaps.

Quality funds. At § 98.83(g), we propose to make two technical changes to delete the phase-in schedule for the quality spending increase at (1) and the infant and toddler spending set-aside at (2) because they are outdated. Current regulations included a phase-in period for Tribes to implement the increased quality set-aside. This phase-in was completed in FFY 2022. Therefore, the phase-in is no longer necessary in the regulations. Going forward, all Tribal Lead Agencies must spend at least 9 percent of their total expenditures, not including state maintenance of effort funds, on quality activities.

Similarly, the 2016 CCDF final rule included a new permanent requirement for Tribal Lead Agencies with large and medium allocations to spend at least 3 percent of total expenditures on activities to improve the quality and supply of child care for infants and toddlers. The 2016 CCDF final rule delayed the effective date of this requirement until FFY 2019. This date is no longer necessary in the regulatory language, and we propose to delete it. These technical changes do not impact

[111] *https://www.acf.hhs.gov/occ/data/gy-2023-ccdf-allocations-based-appropriations.*

the requirement for tribes to meet these spending requirements.

Tribal Construction and Major Renovation Liquidation Period. We propose to revise § 98.84(e) to lengthen the liquidation period for tribal construction and major renovation funds to give tribal lead agencies sufficient time to carry out construction and major renovation projects, which can take many years to plan and execute successfully. The authority to request to use their CCDF funds for construction and major renovation given in section 658O(c)(6)) of the Act (42 U.S.C. 9858m(c)(6)) has been an important Tribal flexibility in the CCDF program. Between FY 2018 and FY 2023, approximately 120 Tribal Lead Agencies set-aside a portion of their CCDF funds to construct or renovate child care facilities in their service area, ultimately improving child care services in tribal communities by building the supply of child care in areas that lacked providers. Tribes have incorporated design features that support the delivery of safe, high-quality care and promote child development, as well as cultural components that reflect each tribe's values and beliefs.

While many tribes have successfully used CCDF funds to build or renovate child care facilities, other tribes have been thwarted by the limited time available to spend the CCDF funds. Current regulations allow tribes to liquidate or spend construction and renovation funds during the year of the award or the two years following the year of award. Unlike CCDF funds spent for purposes other than construction or major renovation, there is no separate requirement to obligate (*i.e.,* legally commit through a contract or other means) the funds within a certain period. The lack of a separate obligation period was intended to give tribes additional time to complete construction and major renovation projects. However, despite the intention to give more flexibility, the existing timeline is insufficient.

Planning and completing successful construction and renovation projects requires many time-consuming steps, including engaging community stakeholders, and hiring architects, engineers, contractors, early learning experts, and other professionals. Project requirements include: conducting a community needs assessment; designing a developmentally appropriate learning environment, a detailed budget, and an environmental assessment; developing plans and specifications; and carrying out the actual construction and renovation work. Tribes have experienced many unexpected delays outside of the control of the Tribal Lead Agency that have impacted the duration of projects, including the COVID–19 pandemic, supply chain shortages, and varying weather conditions based on geographic location. These delays have forced some tribes to adjust the scope of their projects, or to elect to use funds initially set aside for construction and major renovation projects for other CCDF purposes, to meet the liquidation deadline. This leaves much-needed facility projects unfinished, resulting in unmet needs related to availability of child care in tribal communities.

Therefore, we propose to amend the language at § 98.84(e) to allow Tribal Lead Agencies until the end of the fourth year following the year that the grant is awarded to liquidate funds for construction and major renovation (rather than the end of the second year following the year that the grant is awarded, as required by current regulations).

Tribal Lead Agencies currently have the flexibility to request to use construction and major renovation funds for other allowable CCDF purposes if their plans for a construction or major renovation project fall through or are delayed. We would like to establish guardrails to ensure that this flexibility does not result in circumstances where a Tribal Lead Agency inappropriately circumvents the obligation and liquidation requirements for CCDF funds that are not used for construction or major renovation purposes.

We solicit comments on how to best establish these guardrails, such as perhaps establishing a deadline for requesting to use construction or renovation funds for other purposes.

Content of Error Rate Reports—§ 98.102

OCC aims to strengthen oversight and monitoring of program integrity risks by clarifying requirements at § 98.102 for the State Improper Payments Corrective Action Plan (ACF–405). We propose to amend § 98.102(c)(2) to expand the required components of error rate corrective action plans. Specifically, we propose to require at amended paragraph (c)(2)(ii) that corrective action plans include the root causes of errors as identified in the Lead Agency's most recent ACF–404 Improper Payment Report and other root causes. This proposed change is based on recommendations from the Government Accountability Office (GAO) 20–227, *Office of Child Care Should Strengthen Its Oversight and Monitoring of Program-Integrity Risks.* We also propose to separate current (c)(2)(ii) into two provisions, with proposed amended paragraph (c)(2)(iii) to require detailed descriptions of actions to reduce improper payments and the individual responsible for actions being completed and proposed amended paragraph (c)(2)(iv) to require milestones to indicate progress towards action completion and error rate reduction. Additionally, we propose to revise paragraph (c)(2)(v), as redesignated, to clarify that the penalty at paragraph (c)(4) is tied to the Lead Agency's completion of their action steps within one year as described in the timeline in their corrective action plan approved by the Assistant Secretary.

We also propose to add language at paragraph (c)(3) to clarify that the reference to ''subsequent progress reports'' includes State Improper Payments Corrective Action Plans (ACF–405). Progress reports, including the State Improper Payments Corrective Action Plan (ACF–405), will be required until the Lead Agency's improper payment rate no longer exceeds the error rate threshold designated by the Assistant Secretary, which is currently 10 percent. We propose to add language at (c)(4) to strengthen OCC's ability to assess a penalty if the state does not take action steps ''as described.'' We added the word ''as'' to clarify that they should not only take the action steps described, but that they should take them ''*as* described.'' As proposed, it will be at OCC's discretion to impose a penalty for not following them ''as described.''

IV. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.,* as amended) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, we will submit any proposed revised data collection requirements to OMB for review and approval.

The proposed rule modifies several previously approved information collections, but ACF has not yet initiated the OMB approval process to implement these changes. ACF will publish **Federal Register** notices soliciting public comment on specific revisions to those information collections and the associated burden estimates and will make available the proposed forms and instructions for review.

CCDF title/code	Relevant section in the proposed rule	OMB control No.	Expiration date	Description
ACF–118 (CCDF State and Territory Plan).	§§ 98.14, 98.15, and 98.16 (and related provisions).	0970–0114	02/29/2024	The proposed rule would add new requirements which States and Territories will be required to report in the CCDF plans.
ACF–118–A (CCDF Tribal Plan) Part I and Part II.	§§ 98.14, 98.16, 98.18, 98.81, and 98.83 (and related sections).	0970–0198	4/30/2025	The proposed rule would add new requirements which Tribal lead agencies with medium and large allocations will be required to report in the CCDF plans.
ACF–403, ACF–404, ACF–405 (Error Rate Reporting).	§§ 98.100 and 98.102	0970–0323	01/31/2025	The proposed rule would modify this information collection to add new components to the corrective action plans.
Consumer Education Website and Reports of Serious Injuries and Deaths.	§§ 98.33, 98.42	0970–0473	04/30/2023	The proposed rule would modify this information collection to require posting information about parent co-payments.

The table below provides current approved annual burden hours and estimated annual burden hours for these existing information collections that are modified by this proposed rule.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Current approved average burden hours per response	Current annual burden hours	Proposed estimated average burden hours per response	Proposed estimated annual burden hours
ACF–118 (CCDF State and Territory Plan)	56	1	200	3,733	205	3,827
ACF–118–A (CCDF Tribal Plan)	265	1	144	11,448	147	12,985
ACF–403, ACF–404, ACF–405 (Error Rate Reporting)	52	276	907	43,716	912	43,732
Consumer Education Website	56	1	300	16,800	315	17,640

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, 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. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. The Secretary proposes to certify, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rule would not result in a significant impact on a substantial number of small entities, as this rule primarily impacts states, territories, and tribes receiving Federal CCDF grants. Therefore, an initial regulatory flexibility analysis is not required for this document.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by state, local or tribal governments, in the aggregate, or the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2023 the threshold is approximately $177 million. When such a statement is necessary, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. The regulatory impact analysis includes information about the costs of the proposed regulation. As described in the preamble to this proposed rule, several of the proposed changes are at the option of States, Territories, and Tribes. In addition, states, territories, and tribes receive over $11 billion annually in Federal funding to implement the program.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule would not have substantial direct impact on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not

pre-empt state law. In large part, the changes included in the proposed rule are adopting practices already implemented by many states or are increasing flexibilities in administering the CCDF program. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families Section 654 of the Treasury and General Government Appropriations Act of 2000 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this NPRM would not have any impact on the autonomy or integrity of the family as an institution.

V. Regulatory Impact Analysis

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This analysis identifies economic impacts that exceed the threshold for significance under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094.

We have conducted a Regulatory Impact Analysis (RIA) to estimate and describe the expected costs, transfers, and benefits resulting from this proposed rule. This included evaluating State and Territory polices in the major areas of policy change: Eligibility, Payment Rates and Practices, and Family Co-payments. Due to limitations in data, we have not examined and included Tribal policies in our analysis.

A. Context and Assumptions

All proposed changes in this rule are allowable costs within the CCDF program and we expect activities to be paid for using CCDF funding. Nearly $11.5 billion in Federal funding is allocated to State, Territory, and Tribal CCDF grantees in FY 2023.[112] In addition to the Federal funding, states may contribute their own funds to access additional Federal funds, increasing FY 2023 funding for CCDF to about $13.7 billion. Many states have also been increasing state investment in child care beyond the required levels. Without additional funding, it is possible that lead agencies may make difficult tradeoffs, such as reducing the total number of children served by CCDF. However, Lead agencies have flexibility in how they implement many of the proposed provisions and may adjust other policies to avoid additional costs associated with potential policy changes. They may also draw from other Federal funding streams to support the policy changes included in this rule, including through allowable transfers from TANF.

The calculations in this RIA include a number of assumptions and projections. These are variables where there was not data or research available to support a specific figure. To move forward with cost estimates for these provisions, ACF made what we believe to be reasonable assumptions, including on Lead Agency responses to the NPRM's policies. However, while we do not have data for these items, we welcome input from commenters who may have resources that could inform these assumptions and projections.

1. Baseline

To get an accurate account of the costs, transfers, and benefits of this proposed rule, we first established a baseline for current CCDF States and Territory practices. The policies described in this RIA represent the most current information available regarding the policies that were in place at the time that this proposed rule was published. The Lead Agency data and policies described in this RIA is gathered primarily from:

- *ACF–801 (2020, preliminary):*[113] this is case-level data that are collected monthly. The preliminary 2020 data are the most recent data available.
- *ACF–118 (State and Territory Plan, 2022–2024):*[114] This is the application for CCDF funds and provides a description of, and assurances about, the Lead Agency's child care program and all services available to eligible families. Data from the FFY 2022–2024 Plans were the most current data available.
- *CCDF Policies Database (2020):*[115] The CCDF Policies Database, managed by the Office of Planning, Research, and Evaluation (OPRE) and the Urban Institute, is a single source of information on the detailed rules for States' and Territories' CCDF child care subsidy programs. Data was from the ''State Variations in CCDF Policies as of October 1, 2020.''

Since dollar figures are collected from reports that span different years, we adjust all dollar amounts to account for inflation. For the purposes of this RIA, all dollar figures were converted to 2023 dollars.

TABLE 1—AVERAGE MONTHLY ADJUSTED NUMBER OF FAMILIES AND CHILDREN SERVED

[FY 2020][116]

Average number of families	Average number of children
900,300	1,489,200

[112] *https://www.acf.hhs.gov/occ/data/gy-2023-ccdf-allocations-based-appropriations.*

[113] *https://www.acf.hhs.gov/occ/data/fy-2020-ccdf-data-tables-preliminary.*

[114] *https://www.acf.hhs.gov/occ/report/acf-118-overview-state/territorial-plan-reporting.*

[115] CCDF Policies Database, 2020 data. *https://ccdf.urban.org/.*

[116] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-1.*

TABLE 2—NUMBER OF CHILD CARE PROVIDERS RECEIVING CCDF FUNDS
[FY 2020] [117]

Licensed or regulated				Legally operating without regulation							Total
Child's home	Family home	Group home	Center	Child's home		Family home		Group home		Center	
				Relative	Non-Relative	Relative	Non-Relative	Relative	Non-Relative		
37	47,095	22,555	71,630	15,821	6,649	48,122	14,782	0	0	5,042	231,723

2. Implementation Timeline

ACF expects provisions included in the proposed rule, if finalized, to become effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF review and approval of CCDF Plans, including Plan amendments, as well as through other Federal monitoring, including on-site monitoring visits as necessary.

While this proposed rule does not have specific implementation dates for individual provisions, we believe it is reasonable to assume that it will take Lead Agencies some time to implement these policies, particularly since many of these are at the Lead Agency's option and some of the proposed changes in this NPRM may require action on the part of a Lead Agency's legislature or require State, Territory, or Tribal-level rulemaking in order to implement.

For the purposes of this RIA, we are examining a 5-year timeframe and building in one year for Lead Agencies to phase in these provisions. The cost estimate assumes a one year ramp up period of half of the full costs with full implementation in years three, four, and five. The costs, transfers, and benefits in this estimate are phased-in as follows:

Year 1: One half of the full costs/transfers/benefits estimate

Years 2, 3, 4, and 5: Full costs/transfer/benefits estimate

ACF welcomes public comment on specific provisions included in this proposed rule that may warrant a longer phase-in period. These comments will be taken into consideration when assessing the costs, transfers, and benefits of the final rule.

3. Need for Regulatory Action

Congress last authorized the Child Care and Development Block Grant Act in November 2014. In September 2016, HHS published a final regulation, clarifying the new provisions of the Act and building on the priorities that Congress included in reauthorization. In the years since then, the HHS has carefully explored the successes and challenges in the Act's implementation, learning from the experiences of Lead Agencies, providers, families, and early educators, and assessing the impact and implications of the COVID–19 public health emergency.

The proposed revisions in this NPRM are designed to improve on the work of the past, creating a program that effectively supports child development and family economic well-being.

The policies in this NPRM will help families access high-quality child care and mitigate myriad negative consequences of inadequate access to care. Specifically, the proposed revisions:

- Lower child care costs for families,
- Improve parent choice and strengthen child care payment practices, and
- Streamline the process to access child care subsidies.

While ACF has provided guidance on these issues before, several CCDF Lead Agencies have clearly stated that implementing many of these policies with uniformity is not possible without the authority of a regulation. For example, some changes to state-level CCDF policy require state-level legislative action. Further, this regulatory action provides much-needed clarity around what is and what is not allowed.

B. Analysis of Transfers and Costs

OMB Circular A–4 notes the importance of distinguishing between costs to society as a whole and transfers of value between entities in society. While some of these policies may represent budget impacts to CCDF Lead Agencies, from a society-wide perspective, they mostly redistribute costs from one portion of the population to another.

Although we acknowledge that there could be potential increases in resource use at the Lead Agency level, for the technical purposes of this regulatory impact analysis, most of the impacts from these provisions are more accurately categorized as transfers. (The flow of these transfers between entities is discussed in more detail later in this regulatory analysis; for example, the estimation of caseload effects shows how the cost side of the transfers might ultimately be borne by families whose children would participate in CCDF in the absence of the proposed rule but would no longer be able to do so upon the rule's issuance.) The exceptions are the administrative costs associated with grants and contracts and the potential administrative costs associated with encouraging an online component to the initial eligibility application process.

We welcome comment on all aspects of the analysis, but throughout the narrative, we specifically request comment in areas where there is uncertainty.

1. Family Co-Payments

To ensure co-payments are not a barrier to accessing care, we propose to clarify that co-payments shall not be greater than 7 percent of family income. The proposed revisions also give Lead Agencies more flexibility to waive co-payments for additional families.

Permissible Co-payments: This policy would declare co-payments above 7 percent of a family's income are an impermissible barrier to child care and would be prohibited. We are categorizing this policy as a transfer because it transfers the cost from families who would otherwise pay high out of pocket costs or forgo care to Lead Agencies. To calculate this, we took the CCDF State Plan data on family co-payments, where Lead Agencies report their lowest and highest co-pay amounts. Lead agencies report the family income levels associated with those co-payment amounts, so we then calculated what the 7 percent threshold would be, how many of the reported co-payments were above that threshold, and by how much. Then we used CCDF data on the number of families to estimate the cost burden that would be transferred from families to Lead Agencies.

Since the highest co-pay amounts would only apply to CCDF families at the highest income levels, we used ACF–801 data which shows that 19 percent of families are in the highest income category (above 150 percent of

[117] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-7.*

Federal Poverty Line (FPL)).[118] When we apply the current amount of co-pay over 7 percent to these families, we get an annualized transfer amount of $18.8 million. However, it should be noted that this is a likely overestimate, because while families with incomes above 150 percent of FPL are the highest income category in our available data, not all of these families would be paying the highest possible co-payment. Families remain eligible for CCDF until their incomes reach 85 percent of State Median Income, which is significantly higher than 150 percent of FPL. Additionally, there may be families with incomes below 150 percent of FPL that are currently paying above the 7 percent co-pay threshold, however those families would likely be more than offset by the overestimate included in our methodology.

Waiving Co-payments for Additional Populations: This policy would allow Lead Agencies to choose more easily to waive co-payments for families with incomes up to 150 percent of FPL and for eligible families with children with disabilities. Lead Agencies are currently allowed this flexibility for families up to 100 percent of FPL and for vulnerable populations. To calculate this proposed policy, we used state-by-state data (ACF–801) to determine how many CCDF families currently have a co-payment. This eliminates families that already have their co-pays waived from the estimate. We then look at the low and high co-pay amounts (as reported in the CCDF State Plans) and apply it to the remaining CCDF families based on the income distribution of CCDF families (ACF–801 data). We did not do separate estimates for children with disabilities because we have limited data on current co-payments for children with disabilities.

For the purposes of this estimate, we applied the low co-payment level to families with incomes between 0–100 percent of FPL and the high co-payment levels to families with incomes between 100–150 percent of FPL. We note that this is likely an overestimate because families with incomes in the 100–150 percent of FPL range are not the highest earning families in the CCDF program (which allows income up to the higher threshold of 85 percent of State Median Income, though this varies by state).

We then calculated the number of co-payments that would be waived if a subset of Lead Agencies implemented this policy. We calculated the transfer amount for a range of possibilities, including scenarios with a low estimate of 5 percent of Lead Agencies implementing the policy and a high estimate of 45 percent of Lead Agencies. However, based on anecdotal evidence and policy questions that have been submitted to OCC by Lead Agencies, we chose to use a midpoint of 25 percent implementation for the RIA.

Then, because Lead Agencies would have the option for how widely they chose to waive co-payments and how they apply these waivers to families within the state or territory, we estimated this at different tiers, showing the cost if Lead agencies waived co-pays for 25 percent, 50 percent, 75 percent, and 100 percent of families with incomes under 150 percent of FPL. For the purposes of this cost estimate, we are assuming that the states adopting this policy will waive co-pays for 75 percent of families with incomes under 150 percent of FPL. This gave us an annualized transfer amount of $9.5 million to implement this policy. We also conducted a supplemental analysis using ACF–801 administrative microdata, which validated this estimate.

TABLE 3—PAYMENT RATES AND PRACTICES, TRANSFERS

[$ in millions)]

Co-pays	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
7% Co-payment Cap	$10.4	$20.9	$18.8	$18.7	$18.5	$94.0	$88.1	$81.2
Waiving Co-payments	5.3	10.5	9.5	9.4	9.3	47.5	44.5	41.0
Total	15.7	31.4	28.3	28.1	27.9	141.5	132.6	122.2

2. Payment Rates & Practices

The proposed revisions promote provider-friendly payment rates and practices that, if implemented, would increase parent choice in child care, support financial stability for child care providers that currently accept CCDF subsidies, and encourage new providers to participate in the subsidy system. These policies, both with effects categorized as transfers are: Paying Full Rate and Enrollment-based Payment.

Paying Established Payment Rate (Transfer): This policy would codify existing policies that Lead Agencies may pay child care providers the full published subsidy rate even if the provider's private pay rate is lower to help cover the cost of providing care. We are categorizing this as a transfer because it would transfer the cost burden from the providers (who are currently providing equivalent services at relatively low rates) to the CCDF Lead Agency.

There are several limitations of the data that are discussed below. Given these limitations we had for this estimate, we used two different methods. The two different approaches were used to validate each other; while the two approaches used very distinct methodologies, they arrived at similar estimates.

- Base Subsidy Rates vs. Actual Payments (Approach 1): For this approach, we examined the following factors:
  - Base Subsidy Rates versus Actual Subsidy Payments: We examined the difference between the (1) Base Subsidy Rate as reported in the CCDF State Plans[119] and (2) the Average Subsidy Rate (the government portion of actual payments, excluding parent co-payment) as reported in the ACF–801 data.[120] To the extent that the average subsidy payment is lower than the reported base subsidy rate, we are attributing a portion of this difference to current policy limitations (*i.e.,* Lead Agencies currently paying providers no more than their private pay rate). While there may be a variety of factors explaining why the average subsidy

[118] *https://www.acf.hhs.gov/sites/default/files/documents/occ/Characteristics_of_Families_and_Children_FY2020.pdf.*

[119] *https://www.acf.hhs.gov/occ/report/acf-118-overview-state/territorial-plan-reporting.*

[120] *https://www.acf.hhs.gov/occ/data/fy-2020-ccdf-data-tables-preliminary.*

payment is lower than the base payment rate (including co-payments), such as variation in attendance, for the purposes of this estimate we are attributing 25 percent of this difference to current policy limitations.

Note: The average subsidy payment figures in this calculation also include payments to providers that are above the reported base rate due to tiered reimbursement rates for higher quality and other characteristics. We did not have the data necessary to remove those payments. However, we still wanted to adjust our figures to account for these payments. Approach 2 (described below) used microdata to remove payments above the base rate from the sample and found that the difference between base rate and actual payments was twice as large as the amount when those payments remained in the sample. Using this information, we adjusted our figures by a factor of two to simulate the removal of such payments (those paying above the base rate) from our sample.

○ *Setting:* We looked at two sets of data: one for Family Child Care Home providers (including Group Homes) and another for Child Care Centers. We combined the estimates from each of these to come to the final total.

○ *Anticipated Take-up:* Since this is not required and is an option already available to Lead Agencies, we examined a range of implementation rates. The annual amount for this estimate could be as high as $586 million if 25 percent of States adopted this policy and as low as $117 million if only 5 percent of States chose to implement. However, actual take-up will likely depend on availability of funding and given that this policy option is already available to Lead Agencies, we believe that a take-up rate in the middle to lower end of our estimated range would be the most accurate. For the purposes of this estimate, we assume that 10 percent of Lead Agencies will take up this policy.

Our calculation for approach #1 gave us an annual estimated transfer of $234.7 million.

• *Caseload Microdata (Approach 2):* For this second approach, we used ACF–801 caseload microdata (from FY 2018, which was the most recent publicly available data). This allows us to compare subsidy payments and the state's base rate for each child's provider. Doing so allows us to include co-payments to give a more precise understanding of the difference. Some assumptions that went into this approach:

○ *Children in More than One Setting:* In some of the case level data, the child was associated with more than one setting. For the purposes of this estimate, we used the setting with the higher subsidy payment.

○ *Households with More than One Child:* Co-payments are reported by family, so in households with two or more children receiving care, we divided the co-pay evenly among the children. For example, if a family with two children had a $100 co-pay, we assumed that $50 of co-pay went to each child.

○ *Calculating Weekly Provider Payment:* The provider payment is the subsidy payment + parent co-pay (after the co-pay has been split among siblings) and is reported as a monthly figure. To convert this to a weekly amount, we divided by 4.3.

○ *Setting:* Consistent with Approach 1, we used only Family Child Care Homes (including Group Homes) and Child Care Center settings.

○ *Payments above the Base Rate:* As discussed above, these payments were removed from the sample.

○ *School-age children:* The base rate data used for this analysis was for children who are not yet in school, so we removed school-age children from the microdata sample. Including school-age children would have likely resulted in an overestimate of costs (*i.e.,* an overestimate of the amount by which providers are underpaid by subsidies).

○ *Anticipated Take-up:* To remain consistent with Approach 1, we are assuming that 10 percent of states take up this policy option.

For Approach 2, we had an annual transfer estimate of $222.3 million. Though, as stated above, we examined a range of take-up rates with a transfer estimate as high as $571 million per year if 25 percent of Lead agencies implement this policy and as low as $111 million per year if only 5 percent of Lead Agencies choose to implement. However, for our final estimate, we use a projected take-up rate of 10 percent of Lead agencies and took the average of the costs generated by Approaches 1 and 2, for a final annualized transfer estimate of $228.5 million per year.

Enrollment-based Payment: This policy would require Lead Agencies to pay providers based on enrollment instead of attendance. To estimate the financial impact of this policy, we used data from the CCDF Policy Database and the CCDF State Plans to determine (1) which Lead Agencies would need to change their policy, and (2) how many absence days those Lead Agencies are currently allowing.

According to a 2015 study of DC's Head Start program,[121] students were absent for eight percent of school days on average. This works out to 1.8 days per month (weekdays only). However, seven percent of children missed 20 percent or more of enrolled days (equivalent to 4.4 or more weekdays per month). In another study, among a nationally representative sample of Head Start children, children were on average absent 5.5 percent of days (or 1.2 days per month).[122] However, 12 percent of children were chronically absent, that is, absent for more than ten percent of days (or more than 2.1 days per month). And in a study of kindergarten attendance in one county in a mid-Atlantic state, researchers found that on average, kindergartners missed 9.9 days of school (out of the entire school year); that works out to about 1 day per month.[123] Taking the literature into consideration, this estimate makes the assumption that a small number (12 percent) of children would be absent 5 days a month; the remaining children would be absent only 2 days a month. We then calculated how many additional days per month each state would have to pay for when they adopt this new policy. We then applied that number of additional days to the average daily subsidy rate (based on ACF–801 data). This gave us an annualized total of $10.6 million.

There is limited data available on absences in child care. Therefore, for this estimate, we relied on data from Head Start and kindergarten to estimate student absences. We are seeking comments on the methodology and assumptions used to develop the estimated transfer cost associated with the payment rates and practices provisions, including any data or evidence that would better quantify the impact of the proposed changes or inform our assumptions on Lead Agency take-up of optional policies.

[121] *https://www.urban.org/sites/default/files/publication/39156/2000082-absenteeism-in-dc-public-schools-early-education-program_0.pdf.*

[122] Ansari, A., and Purtell, K.M. (2018). Absenteeism in Head Start and Children's Academic Learning. Child Development, 89(4): 1088–1098.

[123] Ansari, A (2021). Does the Timing of Kindergarten Absences Matter for Children's Early School Success? School Psychology, 36 (3): 131–141.

TABLE 4—PAYMENT RATES AND PRACTICES, TRANSFERS

[$ in millions]

Payment rates & practices	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Paying Full Rate	$114.2	$228.5	$205.6	$204.3	$202.4	$1,028.1	$963.5	$888.1
Enrollment-based Payment	5.9	11.8	10.6	10.5	10.4	52.9	49.6	45.7
Total	120.1	240.3	216.2	214.8	212.8	1,081.0	1,013.1	933.8

*Grants and Contracts (*Costs*):* To address lack of supply for certain types of care, the NPRM also proposes requiring the use of some grants and contracts for direct services. When grants or contracts are funded sufficiently to meet any higher quality standards, they can be one of the most effective tools to build supply in underserved areas and for underserved populations. They also have the benefit of providing greater financial stability for child care providers.

To estimate the financial impact of implementing the grants and contracts requirement, we estimated the costs for a small, medium, and large states that include items such as: supply analysis, staff to manage grants and contracts (program manager, fiscal office staff, monitoring staff), and travel and administrative costs. Since we know that there would be a range of possible costs, we estimated a high end and low-end estimate for each of these items. The costs were based on information gathered by the technical assistance providers that have worked with Lead Agencies on implementing grants and contracts. We applied these estimated costs to those States that are not currently using grants and contracts in a manner that is consistent with the proposed requirement.

We averaged these costs over the 5-year window used for this analysis, taking into account the 1-year phase-in period, and came to an estimated annualized amount of $4.2 million to implement this policy.

TABLE 5—PAYMENT RATES AND PRACTICES, COSTS

[$ in millions]

Payment rates and practices (costs)	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Grants and Contracts	$2.3	$4.7	$4.2	$4.2	$4.1	$21.1	$19.7	$18.2
Total	2.3	4.7	4.2	4.2	4.1	21.1	19.7	18.2

3. Eligibility and Enrollment

This NPRM proposes changes to eligibility policies that would lessen the burden on families seeking child care assistance, making it faster and easier to apply for and receive child care subsidies. This is done by clarifying ways that Lead Agencies can simplify subsidy eligibility determination and enrollment processes. The policies explored in this RIA relate to presumptive eligibility and additional child eligibility, which are categorized as transfers. The new policy related to applying online, which is described as a benefit, is discussed in the subsequent benefits section.

Presumptive Eligibility: This policy would permit, but not require, CCDF Lead Agencies to allow families to begin receiving child care assistance before all required documentation has been submitted.

Presumptive eligibility primarily constitutes a transfer from families who would otherwise pay unsubsidized child care costs or forego costs while their application is under review, via Lead Agencies. More specifically, there is a transfer of resources between certain populations of families because some families who receive presumptive assistance could be found to be ineligible once full documentation is received.

Based on other programs that have used presumptive eligibility, such as Medicaid and the Children's Health Insurance Program (CHIP), we do not anticipate that this will be a high percentage of families, particularly since Lead Agencies using this policy can put in place documentation requirements that would limit the number of families that are inaccurately determined to be eligible. However, to the extent that these cases may occur, they would represent a transfer of funds from CCDF-eligible children to CCDF-ineligible children. The cost in this estimate relies on the following assumptions:

- *Estimated Number of Children:* Not all families would need to use presumptive eligibility. There was not data available to support some of the variables in this estimate, so for the purposes of this calculation, we calculated that of the children applying for CCDF, only a fraction will actually utilize presumptive eligibility. This estimate assumes that every month, a number equal to 5 percent of the current CCDF population would use the presumptive eligibility option. Given the lack of data in this area, we welcome input from commenters who may have resources that could inform these assumptions.
- *Anticipated Lead Agency Take-up:* This policy is not required, and we do not anticipate that all Lead Agencies will adopt this policy option. For the purposes of the RIA, we used reports showing which Lead Agencies currently use presumptive eligibility for Medicaid and CHIP [124] (as of August 31, 2021) as a proxy for those Lead Agencies that would also adopt it for CCDF. We are not assuming that these exact same

[124] *https://www.medicaid.gov/medicaid/enrollment-strategies/presumptive-eligibility/index.html.*

states will also use presumptive eligibility, but we believe that it is helpful in estimating the percentage of families for whom this policy would apply.

• *Percentage of Children Eventually Determined Ineligible:* An Urban Institute study [125] on presumptive eligibility found a small number of families receiving presumptive eligibility were eventually found to be ineligible. The study does not cite a specific figure, but a low estimate seems reasonable because CCDF Lead Agencies can put safeguards in place (*e.g.* requiring certain documentation before allowing presumptive eligibility) that would limit the number of families that are eventually determined ineligible. The estimate currently assumes that 5 percent of presumptive eligibility families—a small subset of families receiving CCDF—would eventually be found ineligible. We examined a range of possibilities for families that may eventually be found ineligible, with estimates as high as 10 percent and as low as 2.5 percent of presumptive eligibility families. However, lacking any specific data in this area, we believe that 5 percent is a reasonable estimate. If commenters have additional information on the rate of families that may eventually be found ineligible, we would encourage that information be submitted during the comment process.

• *Amount of Time that CCDF-Ineligible Children will Receive Care:* The range of possible months of assistance that a family could receive through this policy is between zero and 3 months. Since this is a new policy, absent relevant data, we are estimating that families will receive half of the 3 months allowed by the policy (6 weeks) before they are found to be ineligible.

Applying the average subsidy amount of $7,806 per year [126] (which has been adjusted for inflation to 2023 dollars) to the above assumptions, we calculated an annualized transfer of $20.8 million for this policy.

Additional Child Eligibility: This policy clarifies how Lead Agencies must comply with current regulations by offering at least a full 12 months of eligibility to all children receiving CCDF subsidies, even if they are additional children in a family already participating in CCDF. Currently some Lead Agencies are out of compliance with this requirement by limiting the eligibility period for an additional child until the end of the existing child's eligibility period, at which point all children in the family would be re-determined. This proposal benefits CCDF children because it increases the amount of care they would receive, but for this estimate it is considered a transfer because those funds are not being used to enroll new children into the CCDF program. The estimate for this is based on the following assumptions:

• *Number of Additional Children:* We do not currently have data on the rate of new children among CCDF families, however, according to the CDC, the fertility rate is 56.3 births per 1,000 women aged 15–22, or 5.63 percent.[127] For the sake of this analysis, we are assuming that 5 percent of the current CCDF population would have a new child within the year. We then applied this to the number of families served (ACF–801 data) to estimate the number of new children per year.

• *Average Number of Additional Months of Care:* For this estimate, we are assuming that the new children would receive an average of 6 additional months of care (or half of the required minimum 12-month eligibility) due to this policy. Since the minimum would be zero months and the maximum would be twelve months, absent any data in this area, taking the middle between the maximum and the minimum amount of possible assistance seemed like the most reasonable estimate and one that would minimize a misestimate.

• *Number of Lead Agencies Currently Out of Compliance:* We calculated the percentage of Lead agencies that would need to change their policies to comply with this new policy, looking at the cost if 5 percent and 45 percent of Lead Agencies needed to come into compliance. However, for this estimate we calculate that a quarter of Lead Agencies are currently out of compliance, so we are taking 25 percent of the total estimate.

Using the above assumptions and applying the average weighted subsidy amount (ACF–801 data), we came to an annualized transfer amount of $38.2 million.

TABLE 5—ELIGIBILITY POLICIES, TRANSFERS

[$ in millions]

Eligibility policies (transfers)	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Presumptive Eligibility	$11.5	$23.1	$20.8	$20.6	$20.4	$103.8	$97.3	$89.7
Additional Child Eligibility	21.2	42.4	38.2	37.9	37.6	190.8	178.8	164.8
Total	32.7	65.5	58.9	58.5	58.0	294.6	276.1	254.5

C. Analysis of Benefits

The proposed changes made by this NPRM have three primary benefits:

• Lower the cost of care;

• Improve parent choice and strengthen child care payment practices; and

• Streamline the process to access child care subsidies.

Implementation of these policy changes will have direct impacts on two primary beneficiaries: working families with low incomes and child care providers serving children receiving CCDF subsidy.

In examining the benefits of this proposed rule, there are both benefits that we were able to quantify (*e.g.,* applying online) and other benefits that, while we were not able to quantify for this analysis, have very clear positive impacts on children funded by CCDF, their families who need assistance to work, child care providers that care for and educate these children, and society at large. Where we are unable to quantify impacts of proposed policies, we offer qualitative analysis, and welcome comment on ways to measure the benefit that the proposed rule will

[125] Adams, G. (2008). Designing Subsidy Systems to Meet the Needs of Families: An Overview of Policy Research Findings. Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/31461/411611-Designing-Subsidy-Systems-to-Meet-the-Needs-of-Families.PDF.*

[126] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-15.*

[127] *https://www.cdc.gov/nchs/fastats/births.htm.*

have on children, families, child care providers, and the public.

Lowering the cost of child care: For many families, child care is prohibitively expensive. In 34 states and the District of Columbia, enrolling an infant in a child care center costs more than in-state college tuition.[128] More than 1 in 4 families, across income levels, commits at least 10 percent of their income to child care. Households with incomes just above the Federal poverty level are most likely to commit more than 20 percent of their income to child care.[129] The cost of child care drives parents—particularly women—to exit the workforce. In response, families often seek out less expensive care—which may have less rigorous quality or safety standards—or exit the workforce to forego child care entirely.[130]

Among other purposes, Congress designated the CCDBG Act to ''promote parental choice,'' to ''support parents trying to achieve independence from public assistance,'' and to ''increase the number and percentage of low-income children in high-quality child care settings'' (sec. 658A(b), 42 U.S.C. 9857(b)). High co-payments undermine these statutory purposes. Despite receiving child care subsidies, child care affordability remains a concern for families with low incomes and prevents families from feeling empowered to make child care decisions that best meet their needs. In 2019, 76 percent of households that searched for care for their young children had difficulty finding care that met their needs. Among this group, when respondents were asked the main reason for difficulty, the most common barrier was cost, followed by a lack of open slots.[131] Receiving child care subsidies alone are not enough for parents to feel secure in making ends meet. Multiple qualitative studies found that parents receiving subsidy continue to experience substantial financial burden in meeting their portion of child care costs.[132] Other research shows that higher out-of-pocket child care expenses (which may include co-payments) reduce families' child care use and parental (particularly maternal) employment.[133] Given that co-payments have been shown to limit parents' access to child care among CCDF-participating families in terms of both parents' ability to afford particular child care settings as compared to higher-income families (even among families eligible to receive CCDF), ACF proposes to make changes to § 98.45 to reduce parent co-payments.

To make child care more affordable to families participating in CCDF, we propose that family co-payments above 7 percent of family income are impermissible because they are a barrier to accessing care. The proposed revisions also give Lead Agencies more flexibility to waive co-payments for additional families.

Increase parent choice and strengthen and stabilize the child care sector: The proposed revisions promote provider-friendly payment rates and practices that, if implemented, would increase parent choice in care, support financial stability for child care providers that currently accept CCDF subsidies, and encourage new providers to participate in the subsidy system.

Correcting detrimental payment practices is critical for ensuring all families have access to high-quality child care. The proposed revisions in this NPRM would require Lead Agencies to pay providers prospectively based on enrollment. To address lack of supply for certain types of care for populations prioritized in the CCDBG Act, the NPRM also proposes requiring the use of some grants and contracts for direct services. Additionally, the proposed revisions clarify that Lead Agencies may pay providers the full established state payment rate, even if the rate is above the private pay price to adjust for the cost of care. Payments based on enrollment[134] and through grants and contracts[135] helped providers remain financially stable during the peak of the COVID–19 public health emergency. The proposed revisions to payment practices and higher subsidy rates are also linked to higher-quality care and increases in the supply of child care.[136] [137] [138]

Streamline the process to access child care subsidies: The proposed revisions in this NPRM encourage Lead Agencies to reduce the burden on families to access child care subsidies. Current subsidy eligibility determination and enrollment processes create administrative burden that unnecessarily complicates how families access subsidies.[139]

In the context of child care subsidies, administrative burden disrupts initial and continued access to care, both of which are detrimental to children's development and families' employment security.[140] We see administrative burden play out, for example, when Lead Agencies assess family eligibility. A substantial portion of families who lose benefits still meet the criteria for participation. Within a few months, those same families can demonstrate eligibility and return for subsequent enrollment.[141] Workers with unexpected hours or limited control over their schedule are significantly more likely to lose child care subsidies.[142] Further, families who electively exit the program are three times more likely to do so during their redetermination month than any other time.[143] These studies suggest that these

[128] Child Care Aware of America. (2022). Price of Care: 2021 child care affordability analysis. Arlington, VA: Child Care Aware of America *https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care/#ChildCareAffordability.*

[129] National Survey of Early Care and Education Project Team (2022): Erin Hardy, Ji Eun Park. 2019 NSECE Snapshot: Child Care Cost Burden in U.S. Households with Children Under Age 5. OPRE Report No. 2022–05, Washington DC: Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS). *https://www.acf.hhs.gov/opre/report/2019-nsece-snapshot-child-care-cost-burden-us-households-children-under-age-5.*

[130] Hill, Z., Bali, D., Gebhart, T., Schaefer, C., & Halle, T. (2021) Parents' reasons for searching for care and results of search: An analysis using the Access Framework. OPRE Report #2021–39. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. *https://www.acf.hhs.gov/opre/report/parents-reasons-searching-early-care-and-education-and-results-search-analysis-using.*

[131] National Center for Education Statistics. 2019. National Household Education Surveys Program 2019. *https://nces.ed.gov/nhes/young_children.asp.*

[132] Scott, E. K., Leymon, A. S., & Abelson M. (2011). Assessing the Impact of Oregon's 2007 Changes to Child-Care Subsidy Policy. Eugene, Oregon: University of Oregon; Grobe, Deana & Weber, Roberta & Davis, Elizabeth & Scott, Ellen. (2012). Struggling to Pay the Bills: Using Mixed-Methods to Understand Families' Financial Stress and Child Care Costs. 10.1108/S1530–3535(2012)0000006007.

[133] Morrissey, Taryn W. ''Child care and parent labor force participation: a review of the research literature.'' *Review of Economics of the Household* 15.1 (2017): 1–24. *https://link.springer.com/content/pdf/10.1007/s11150-016-9331-3.pdf.*

[134] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.

[135] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.

[136] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.

[137] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.

[138] Greenberg, E. et al. (2018). Are Higher Subsidy Payment Rates and Provider-Friendly Payment Policies Associated with Child Care Quality? Urban Institute.

[139] Adams, G. and Compton, J. (2011). Client-Friendly Strategies: What Can CCDF Learn from Research on Other Systems? Urban Institute.

[140] Adams, G., & Rohacek, M. (2010). Child care instability: Definitions, context, and policy implications. Urban Institute.

[141] Grobe, D., Weber, R. B., & Davis, E. E. (2008). Why do they leave? Child care subsidy use in Oregon. Journal of Family and Economic Issues.

[142] Henly, J. et al. (2015). Determinants of Subsidy Stability and Child Care Continuity. Urban Institute.

[143] Grobe, D., Weber, R. B., & Davis, E. E. (2008). Why do they leave? Child care subsidy use in Oregon. Journal of Family and Economic Issues.

families missed out on benefits because of administrative challenges rather than issues with eligibility.

We were able to quantify the impact of the policy to encourage CCDF Lead Agencies to implement policies that ease the burden of applying for child care assistance, including allowing online methods of submitting initial CCDF applications. This would be a benefit to families who would not have to take time off from work, job search, or other activities to apply for child care assistance. To estimate this benefit, we used the following factors:

• *Number of Families That Would Benefit:* As a baseline for the number of families that would be impacted by this policy, we assumed that the number of families applying every month is equal to 5 percent of the current CCDF monthly caseload, which means that over the course of a year, several families equal to 60 percent of the current caseload is applying for child care. However, many more people apply for CCDF than receive assistance, so we doubled this number, assuming that for every family who applies to CCDF and receives assistance, there may be another family who applies and does not receive assistance.

• *Estimated Time Saved:* We are estimating that the online option would save families from missing 4 hours of time or half of a full day's work. This accounts for the time to actually process the application in person and time to travel to and from the appointment.

• *Wages:* We adopt an hourly value of time based on after-tax wages to quantify the opportunity cost of changes in time use for unpaid activities. This approach matches the default assumptions for valuing changes in time use for individuals undertaking administrative and other tasks on their own time, which are outlined in an ASPE report on ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.'' [144] We start with a measurement of the usual weekly earnings of wage and salary workers of $1,059.[145] We divide this weekly rate by 40 hours to calculate an hourly pre-tax wage rate of $26.48. We adjust this hourly rate downwards by an estimate of the effective tax rate for median income households of about 17 percent, resulting in a post-tax hourly wage rate of $21.97. We adopt this as our estimate of the hourly value of time when calculating benefits associated with this impact. If we were to use a fully-loaded wage of $37.56/hour, the cost of full implementation would be $40.1 million. However, for the accounting statement, we use the post-tax hourly wage of $21.97.

Using the above figures and applying them to the CCDF caseload, we estimate an annualized benefit of $21.1 million related to this policy. As noted previously, the RIA, including the figures above, include a number of assumptions and projections, for which there was not data or research available to support a specific figure. We welcome input from commenters who have may have resources that could inform these assumptions and projections.

TABLE 6—ELIGIBILITY POLICIES, BENEFITS

[$ in millions]

Eligibility policies (benefits)	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized benefit amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Applying Online	$11.7	$23.5	$21.1	$21.0	$20.8	$105.6	$99.0	$91.3
Total	11.7	23.5	21.1	21.0	20.8	105.6	99.0	91.3

Research evidence clearly points to the benefits of access to high-quality child care, including immediate benefits for improved parenting earnings and employment.[146] [147] [148] [149] In turn, improved employment, and economic stability at home, combined with high-quality experiences and nurturing relationships in early childhood settings, reduces the impact of poverty on children's health and development. Evidence further shows the positive effects of high-quality child care are especially pronounced for families with low incomes and families experiencing adversity. Therefore, as children and families go through periods of challenge or transition, timely access to reliable and affordable care is especially critical. This includes when parents start a new job or training program, experience changes in earnings or work hours, move to a new area, or lose access to an existing care arrangement, which some families report are the circumstances that bring them to first apply for CCDF subsidies.[150] These are also circumstances under which CCDF has the potential to substantially impact family earnings, economic stability, and well-being.

Improving access to assistance also yields benefits in terms of child development outcomes. The provisions in this rule expand access and some children who might not have received subsidized care under the current rule (*e.g.,* those whose parents could not pay the copay) would receive subsidized

[144] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. 2017. ''Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.'' *https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-frameworkhttps://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework.*

[145] U.S. Bureau of Labor Statistics. Employed full time: Median usual weekly nominal earnings (second quartile): Wage and salary workers: 16 years and over [LEU0252881500A], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LEU0252881500A.https://fred.stlouisfed.org/series/LEU0252881500A.* Annual Estimate, 2022.

[146] Morrissey, T.W. 2017. Child care and parent labor force participation: a review of the research literature. Review of Economics of the Household 15, 1–24. *https://doi.org/10.1007/s11150-016-9331-3.*

[147] Shonkoff, J. P., & Phillips, D. A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.

[148] Blau, D., Tekin, E. (2007). The determinants and consequences of child care subsidies for single mothers in the USA. Journal of Population Economics 20, 719–741. *https://doi.org/10.1007/s00148-005-0022-2.*

[149] Herbst, C. (2017). Universal Child Care, Maternal Employment, and Children's Long-Run Outcomes: Evidence from the US Lanham Act of 1940. Journal of Labor Economics, 35 (2). *https://doi.org/10.1086/689478.*

[150] Lee, R., Gallo, K., Delaney, S., Hoffman, A., Panagari, Y., et al. (2022). Applying for child care benefits in the United States: 27 families' experiences. US Digital Response. *https://www.usdigitalresponse.org/projects/applying-for-child-care-benefits-in-the-united-states-27-families-experiences.*

care under the proposed rule. For these children, they are likely to receive higher quality care than they otherwise would have. Research has demonstrated clear linkages between high quality child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[151] [152] [153] [154]

D. Distributional Effects

We considered, as part of our regulatory impact analysis, whether changes would disproportionately benefit or harm a particular subpopulation. As discussed above, benefits accrue both directly and indirectly to society. Some of the policies included in this NPRM are at the Lead Agency option, so the impacts will be dependent upon (1) if the Lead Agency chooses to adopt the policy, and (2) how they choose to implement the policy given the available funding.

When examining the potential impacts of these policies, there are several required policies where certain subsets of the population may be impacted differently by the proposed policies.

While the proposed policies will limit the amount of family co-payment that CCDF families will have to pay, the child care providers must still be compensated for that amount. That means that the burden of those co-payment costs shift to the CCDF Lead Agency. Given finite funding for CCDF, the increase in payments for which Lead Agencies are now responsible would mean that there are less resources for new CCDF families.

Similarly, the proposed requirement to pay providers based on a child's enrollment rather than attendance will stabilize funding for providers, may increase the amount a Lead Agency pays if they were not previously paying for absence days in the same manner parents without child care subsidies by for absence days. This creates a transfer in resources from the child care provider, who previously had to continue running the program without funding on days when the child was absent, to the Lead Agency. This shift in funding would decrease available funding for the Lead Agency, and therefore, could result in a decrease in the number of children served. Based on our estimated amount of combined transfers (at full implementation) and the average subsidy payment amount, we estimate that the proposed transfers for these required policies could lead to a reduction in caseload of approximately 4,800 children per year, or about a third of 1 percent of the FY 2020 caseload.

For the eligibility policies, we are not projecting a reduction in slots. This is because for both the presumptive eligibility policy and the new child eligibility policy, these represents transfers from one child to another. The result is a shift in which child is occupying a CCDF slot, but we do not project that these policies would lead to a decrease in the number of children served.

For those children who potentially would have received subsidies under the current rule, but do not receive subsidies under the proposed rule, it is possible that they would receive unregulated care which tends to be lower quality and less stable. However, as noted in the *Discussion of Proposed Changes* section, we expect that, overall, the policies proposed will improve quality and stability of care for children who continue to participate in CCDF.

E. Analysis of Regulatory Alternatives

In developing this proposed rule, we considered a wide range of policy options before settling on these final versions of the policies. Among these alternatives, we considered:

- *Presumptive eligibility:* The current proposal for presumptive eligibility allows for lead agencies to provide families with up to three months of subsidy while the family completes the full eligibility determination process. In designing this policy, we considered a period of two months instead of three months. Using the same assumptions described above, we estimated that two-month presumptive eligibility period would be a transfer of $15.4 million. When compared to the estimated transfer of $23.1 million for a three-month presumptive eligibility period, we determined that the value of the additional month of stability and continuity of care for families outweighed the minimal savings of a two-month presumptive eligibility period. We are seeking comments on the proposed length of the presumptive eligibility period.
- *Not regulating:* Another alternative would be to not pursue a regulation and leave the existing policies as they currently stand. For characterization of relevant future conditions in the absence of regulatory changes, please see the ''Baseline'' section of this regulatory impact analysis.

Accounting Statement (Table of Quantified Costs, Including Opportunity Costs, Transfers and Benefits): As required by OMB Circular A–4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this proposed rule.

TABLE 7—QUANTIFIED COSTS, TRANSFERS AND BENEFITS

[$ in millions]

	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Eligibility:								
Presumptive Eligibility [155]	$11.5	$23.1	$20.8	$20.6	$20.4	$103.8	$97.3	$89.7
Additional Child Eligibility [156]	21.2	42.4	38.2	37.9	37.6	190.8	178.8	164.8
Payment Rates & Practices:								
Paying Full Rate [157]	114.2	228.5	205.6	204.3	202.4	1,028.1	963.5	888.1
Enrollment-based Payment [158]	5.9	11.8	10.6	10.5	10.4	52.9	49.6	45.7

[151] Deming, David. 2009. ''Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start.'' American Economic Journal: Applied Economics, 1 (3): 111–34.

[152] Duncan, G. J., and Magnuson, K. 2013. ''Investing in Preschool Programs.'' Journal of Economic Perspectives, 27 (2): 109–132.

[153] Heckman, James J., and Tim Kautz. ''Fostering and Measuring Skills Interventions That Improve Character and Cognition.'' In The Myth of Achievement Tests: The GED and the Role of Character in American Life. Edited by James J. Heckman, John Eric Humphries, and Tim Kautz (eds). University of Chicago Press, 2014. Chicago Scholarship Online, 2014. *https://doi.org/10.7208/chicago/9780226100128.003.0009.*

[154] Weiland, C., Yoshikawa, H. 2013. ''Impacts of a Prekindergarten Program on Children's Mathematics, Language, Literacy, Executive Function, and Emotional Skills.'' Child Development, 86(6), 2112–2130.

TABLE 7—QUANTIFIED COSTS, TRANSFERS AND BENEFITS—Continued

[$ in millions]

	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Family Co-payments:[159]								
7% Co-pay Cap	10.4	20.9	18.8	18.7	18.5	94.0	88.1	81.2
Waiving Co-pays	5.2	10.5	9.5	9.4	9.3	47.5	44.5	41.0
Total (Transfers)	168.4	337.1	303.4	301.4	298.8	1,517.1	1,421.8	1,310.5
Costs (in millions)								
Grants and Contracts	2.3	4.7	4.2	4.2	4.1	21.1	19.7	18.2
Total	2.3	4.7	4.2	4.2	4.1	21.1	19.7	18.2
Benefits (in millions)								
Eligibility:								
Applying Online	11.7	23.5	21.1	21.0	20.8	105.6	99.0	91.3
Total (Benefits)	11.7	23.5	21.1	21.0	20.8	105.6	99.0	91.3

F. Impact of Proposed Rule

Based on the calculations in this RIA, we estimate the quantified annual impact of the proposed rule to be about $303 million in transfers, $4.2 million in costs, and $21 million in benefits. However, the RIA only quantifies the estimated impact of the NPRM on the Lead Agencies, parents, and providers that interact with the CCDF program, which is only a small portion of the child care market. Whether a family can access and afford child care has far reaching impacts on labor market participation and potential earnings, which then affects businesses' ability to recruit and retain a qualified workforce, affecting overall economic growth.[160]

VI. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The discussion of subpart I in section III of the preamble serves as the Tribal impact statement. We intend to notify Tribal lead agencies about the opportunity to provide comment on the NPRM no later than the day of publication. Further, shortly after publication of the NPRM, we plan to hold briefing sessions with tribal lead agencies and any other interested tribe on the contents of the NPRM.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on June 30, 2023.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

List of Subjects in 45 CFR Part 98

Child care, Grant programs—social programs.

Dated: June 30, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR part 98 as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 618, 9858.

■ 2. Amend § 98.2 by:

■ a. Revising the definitions of *Major renovation* and *State;*

■ b. Adding, in alphabetical order, the definitions of *Territory* and *Territory Mandatory Funds;* and

■ c. Removing the definition of *Tribal mandatory funds* and adding the definition of *Tribal Mandatory Funds* in its place.

The revisions and additions read as follows:

§ 98.2 Definitions.

* * * * *

Major renovation means any individual or collective renovation that has a cost equal to or exceeding $250,000 for child care centers and $25,000 for family child care homes, which amount shall be adjusted annually for inflation and published on the Office of Child Care website. Renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a collective group of renovation activities;

* * * * *

State means any of the States and the District of Columbia, and includes Territories and Tribes unless otherwise specified;

* * * * *

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands;

Territory Mandatory Funds means the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories;

[155] Transfer from CCDF-eligible families to non-CCDF eligible families.

[156] Transfer from families applying to enter the CCDF program to families that already have children receiving CCDF assistance.

[157] Transfer to some combination of child care providers and CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies.

[158] Transfer to some combination of child care providers and CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies.

[159] Transfer to CCDF families *from* some combination of other CCDF families and CCDF Lead Agencies.

[160] U.S. Department of the Treasury. (September 2021). The Economics of Child Care Supply in the United States. *https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.*

Tribal Mandatory Funds means the child care funds set aside at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations;

* * * * *

■ 3. Amend § 98.13 by revising paragraph (b)(4) to read as follows:

§ 98.13 Applying for Funds.

* * * * *

(b) * * *

(4) A certification that no principals have been debarred pursuant to 2 CFR 180.300;

* * * * *

■ 4. Amend § 98.15 by revising paragraphs (a)(8) and (b)(12) to read as follows:

§ 98.15 Assurances and certifications.

* * * * *

(a) * * *

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m);

* * * * *

(b) * * *

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

* * * * *

■ 5. Amend § 98.16 by:

■ a. Revising paragraphs (h)(4) through (7);

■ b. Adding paragraphs (h)(8) through (10);

■ c. Revising paragraph (k);

■ d. Redesignating paragraphs (x) through (ii) as paragraphs (y) through (jj);

■ e. Adding a new paragraph (x); and

■ f. Revising newly redesignated paragraph (y).

The revisions and addition read as follows:

§ 98.16 Plan provisions.

* * * * *

(h) * * *

(4) Processes to incorporate additional eligible children in the family size in accordance with § 98.21(d);

(5) Procedures and policies for presumptive eligibility in accordance with § 98.21(e), including procedures for tracking the number of presumptively eligible children who turn out to be ineligible and for adjusting presumptive eligibility processes accordingly to ensure funds are safeguarded for eligible children;

(6) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete initial eligibility determination or re-determination, pursuant to § 98.21(f);

(7) Processes for using eligibility for other programs to verify eligibility for CCDF in accordance with § 98.21(g);

(8) Limiting any requirements to report changes in circumstances in accordance with § 98.21(h);

(9) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(i); and,

(10) Other policies and practices such as timely eligibility determination and processing of applications;

* * * * *

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.45(l). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

* * * * *

(x) A description of the supply of child care, including care for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours. The description must, at a minimum:

(1) Identify shortages in the supply of high-quality child care providers; and,

(2) List the data sources used to identify shortages;

(y) A description of the Lead Agency's strategies to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours based on the information at paragraph (x) of this section. The description must include, at a minimum:

(1) How the Lead Agency will use grants and contracts in supply building;

(2) Whether the Lead Agency plans to use other means for building supply, such as alternative payment rates to child care providers and offering child care certificates;

(3) How supply-building mechanisms will address the needs identified in paragraph (x) of this section; and,

(4) Describe the method of tracking progress to increase supply and support equal access and parental choice;

* * * * *

■ 6. Amend § 98.21 by:

■ a. Revising paragraphs (a)(2)(iii) and (a)(5)(ii) and (iii);

■ b. Adding paragraph (a)(5)(iv);

■ c. Revising paragraph (d);

■ d. Redesignating paragraphs (e) through (g) as paragraphs (h) through (j); and

■ e. Adding new paragraphs (e), (f), and (g).

The revisions and additions read as follows:

§ 98.21 Eligibility determination processes.

(a) * * *

(2) * * *

(iii) If a Lead Agency chooses to initially qualify a family for CCDF assistance based on a parent's status of seeking employment or engaging in job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still not found employment, although assistance should continue if the parent becomes employed during the job search period.

* * * * *

(5) * * *

(ii) A change in residency outside of the State, Territory, or Tribal services area;

(iii) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility; or,

(iv) A final determination of ineligibility after an initial determination of presumptive eligibility at paragraph (f)(1) of this section, in accordance with paragraph (e)(2) of this section.

* * * * *

(d) The Lead Agency shall establish policies and processes to incorporate additional eligible children in the family size (*e.g.,* siblings or foster siblings), including ensuring a minimum of 12 months of eligibility between eligibility determination and redetermination as described in paragraph (a) of this section for children previously determined eligible and for new children who are determined eligible, without placing undue reporting burden on families.

(e) At a Lead Agency's option, provided the Lead Agency is not currently under a corrective action plan pursuant to § 98.102(c), a child may be considered presumptively eligible for up to three months and begin to receive child care subsidy prior to full documentation and eligibility determination:

(1) The Lead Agency may issue presumptive eligibility prior to full documentation of a child's eligibility if the Lead Agency first obtains a less burdensome minimum verification requirement from the family.

(2) If, after full documentation is provided, a child is determined to be ineligible, the Lead Agency shall not recover funds paid or owed to a child care provider for services provided as a result of the presumptive eligibility determination except in cases of fraud or intentional program violation by the provider.

(3) Any CCDF payment made prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part and will not be subject to disallowance.

(4) If a child is determined to be eligible, the period of presumptive eligibility will apply to the minimum of 12 months of eligibility prior to re-determination described in paragraph (a) of this section.

(f) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program:

(1) For eligibility that minimize disruptions to employment, education, or training, including the use of online applications and other measures, to the extent practicable; and,

(2) Are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or re-determination process.

(g) At the Lead Agency's option, enrollment in other benefit programs or documents or verification used for other benefit programs may be used to verify eligibility as appropriate according to § 98.68(c) for CCDF, including:

(1) Benefit programs with income eligibility requirements aligned with the income eligibility at § 98.20(a)(2)(i) may be used to verify a family's income eligibility; and

(2) Benefit programs with other eligibility requirements aligned with § 98.20(a)(3) may verify:

(i) A family's work or attendance at a job training or educational program;

(ii) A family's status as receiving, or need to receive, protective services; or

(iii) Other information needed for eligibility.

* * * * *

■ 7. Amend § 98.30 by revising paragraph (b) to read as follows:

§ 98.30 Parental choice.

* * * * *

(b)(1) Lead Agencies shall increase parent choice by providing some portion of the delivery of direct services via grants or contracts, including at a minimum for families receiving subsidies who need care for infants and toddlers, children with disabilities, and care during nontraditional hours.

(2) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

* * * * *

■ 8. Amend § 98.33 by revising paragraphs (a)(4)(ii) and (a)(5) and adding paragraph (a)(8) to read as follows:

§ 98.33 Consumer and provider education.

* * * * *

(a) * * *

(4) * * *

(ii) Areas of compliance and non-compliance;

* * * * *

(5) Aggregate data for each year for eligible providers including:

(i) Number of deaths (for each provider category and licensing status);

(ii) Number of serious injuries (for each provider category and licensing status);

(iii) Instances of substantiated child abuse that occurred in child care settings; and,

(iv) Total number of children in care by provider category and licensing status.

* * * * *

(8) The sliding fee scale for parent co-payments pursuant to § 98.45(l), including the co-payment amount a family may expect to pay and policies for waiving co-payments.

* * * * *

■ 9. Amend § 98.43 by revising paragraphs (a)(1)(i), (c)(1) introductory text, (c)(1)(v), and (d)(3)(i) introductory text to read as follows:

§ 98.43 Criminal background checks.

(a)(1) * * *

(i) Requirements, policies, and procedures to require and conduct background checks, and make a determination of eligibility for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

* * * * *

(c)(1) The State, Territory, or Tribe in coordination with the Lead Agency shall find a child care staff member ineligible for employment by child care providers of services for which assistance is made available in accordance with this part, if such individual:

* * * * *

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, and sexual assault, or of a misdemeanor involving child pornography.

* * * * *

(d) * * *

(3) * * *

(i) The staff member received qualifying results from a background check described in paragraph (b) of this section:

* * * * *

■ 10. Amend § 98.45 by:

■ a. Revising paragraphs (b)(5) and (6) and (d)(2)(ii);

■ b. Redesignating paragraphs (g) through (l) as paragraphs (h) through (m);

■ c. Adding a new paragraph (g);

■ d. Revising newly redesignated paragraphs (l)(3) and (4) and (m)(1) and (2);

■ e. Removing the colon at the end of newly redesignated paragraph (m)(3)(ii) and add a period in its place;

■ f. Revising newly redesignated paragraph (m)(4);

■ g. Removing the semicolon at the end of newly redesignated paragraph (m)(5) and adding a period in its place; and

■ h. Adding paragraph (m)(7).

The revisions and additions read as follows:

§ 98.45 Equal access.

* * * * *

(b) * * *

(5) How co-payments based on a sliding fee scale are affordable and do not exceed 7 percent of income for all families, as stipulated at paragraph (l) of this section; if applicable, a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts to (based on information obtained in accordance with paragraph (d)(2) of this section);

(6) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;

* * * * *

(d) * * *

(2) * * *

(ii) CCDF child care providers charge amounts to families more than the required family co-payment (under paragraph (l) of this section) in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

* * * * *

(g) To facilitate parent choice, increase program quality, build supply, and better reflect the cost of providing care, it is permissible for a lead agency to pay an eligible child care provider the Lead Agency's established payment rate at paragraph (a) of this section, which may be more than the price charged to children not receiving CCDF subsidies.

* * * * *

(l) * * *

(3) Provides for affordable family co-payments not to exceed 7 percent of income for all families, regardless of the number of children in care who may be receiving CCDF assistance, that are not a barrier to families receiving assistance under this part; and

(4) At Lead Agency discretion, allows for co-payments to be waived for families whose incomes are at or below 150 percent of the poverty level for a family of the same size, that have children who receive or need to receive protective services, that have children who have a disability as defined at § 98.2, or that meet other criteria established by the Lead Agency.

(m) * * *

(1) Ensure timeliness of payment by paying prospectively prior to the delivery of services.

(2) Support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

(i) Paying based on a child's enrollment rather than attendance; or

(ii) An alternative approach for which the Lead Agency provides a justification in its Plan that it is not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

* * * * *

(4) Ensure child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding provider payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (m)(6) of this section.

* * * * *

(7) May include taking precautionary measures when a provider is suspected of fiscal mismanagement.

■ 11. Amend § 98.50 by revising paragraphs (a)(3), (b)(1) and (2), and (e) introductory text to read as follows:

§ 98.50 Child care services.

(a) * * *

(3) Using funding methods provided for in § 98.30 including grants and contracts for infants and toddlers, children with disabilities, and nontraditional hour care; and

* * * * *

* * * (b) (1) No less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

* * * * *

(e) Not less than 70 percent of the State and Territory Mandatory and Federal and State share of State Matching Funds shall be used to meet the child care needs of families who:

* * * * *

■ 12. Amend § 98.60 by:

■ a. Revising paragraphs (a)(2) and (3);

■ b. Adding paragraph (a)(4); and

■ c. Revising paragraph (d)(3).

The revisions and addition read as follows:

§ 98.60 Availability of funds.

(a) * * *

(2) State Mandatory and Matching Funds are available to States;

(3) Territory Mandatory Funds are available to Territories; and

(4) Tribal Mandatory Funds are available to Tribes.

* * * * *

(d) * * *

(3) Mandatory Funds for Territories shall be obligated in the fiscal year in which funds are granted and liquidated no later than the end of the succeeding fiscal year.

* * * * *

■ 13. Amend § 98.62 by revising paragraphs (a) introductory text and (b) introductory text and adding paragraph (d) to read as follows:

§ 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3)(A) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) an amount of funds equal to the greater of:

* * * * *

(b) For Indian Tribes and tribal organizations will be allocated from the funds appropriated under section 418(a)(3)(B) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

* * * * *

(d) The Territories will be allocated from the funds appropriated under section 418(a)(3)(C) of the Social Security Act based upon the following factors:

(1) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(2) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(i) Per capita income shall be:

(A) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(B) Determined every two years.

(ii) [Reserved]

■ 14. Amend § 98.64 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds and Territory Mandatory Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Mandatory Funds granted to Territories are redistributed only to Territories. Discretionary Funds granted to the Territories are not subject to reallotment. Any Discretionary funds granted to the Territories that are returned after they have been allotted will revert to the Federal Government.

* * * * *

(e)(1) Any portion of the Mandatory Funds that are not obligated in the period for which the grant is made shall be redistributed. Territory Mandatory Funds, if any, will be redistributed on the request of, and only to, those other Territories that have obligated their entire Territory Mandatory Fund allocation in full for the period for which the grant was first made.

(2) The amount of Mandatory Funds granted to a Territory that will be made available for redistribution will be based on the Territory's financial report to ACF for the Child Care and Development Fund (ACF–696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(3) A Territory eligible to receive redistributed Mandatory Funds shall also use the ACF–696 to request its share of the redistributed funds, if any.

(4) A Territory's share of redistributed Mandatory Funds is based on the same ratio as § 98.62(d).

(5) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

§ 98.71 [Amended]

■ 15. Amend § 98.71 by removing paragraph (a)(11).

■ 16. Amend § 98.81 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(6)(viii);

■ b. Revising paragraph (b)(6)(ix); and

■ c. Adding paragraphs (b)(6)(x) and (xi).

The revision and additions read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(6) * * *

(ix) The description of how the Lead Agency uses grants and contracts for supply building at § 98.16(y)(1);

(x) The description of the sliding fee scale at § 98.16(k); and,

(xi) The description of how the Lead Agency prioritizes increasing access to high-quality child care in areas with high concentration of poverty at § 98.16(z).

* * * * *

■ 17. Amend § 98.83 by:

■ a. Redesignating paragraphs (d)(1)(vii) through (x) as paragraphs (d)(1)(x) through (xiii);

■ b. Adding a new paragraph (d)(1)(ix);

■ c. Redesignating paragraphs (d)(1)(v) and (vi) as paragraphs (d)(1)(vii) and (viii);

■ d. Adding a new paragraph (d)(1)(vi);

■ e. Redesignating paragraphs (d)(1)(i) through (iv) as paragraphs (d)(1)(ii) through (v);

■ f. Adding a new paragraph (d)(1)(i); and

■ g. Revising paragraphs (g) introductory text and (g)(1) and (2).

The revisions and additions read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(d)(1) * * *

(i) The requirements to use grants and contracts to build supply for certain populations at § 98.30(b);

* * * * *

(vi) The requirement for a sliding fee scale at § 98.45(l);

* * * * *

(ix) The requirements to use grants and contracts at § 98.50(a)(3);

* * * * *

(g) Of the aggregate amount of funds expended (*i.e.,* Discretionary and Mandatory Funds):

(1) For Tribal Lead Agencies with large, medium, and small allocations, no less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) For Tribal Lead Agencies with large and medium allocations, no less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

* * * * *

■ 18. Amend § 98.84 by revising paragraph (e) to read as follows:

§ 98.84 Construction and renovation of child care facilities.

* * * * *

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall liquidate CCDF funds used for construction or major renovation by the end of the fourth fiscal year following the fiscal year for which the grant is awarded.

* * * * *

■ 19. Amend § 98.102 by:

■ a. Revising paragraphs (c)(2)(ii) through (iv);

■ b. Adding paragraphs (c)(2)(v) and (vi); and

■ c. Revising paragraphs (c)(3) and (4).

The revisions and additions read as follows:

§ 98.102 Content of Error Rate Reports.

* * * * *

(c) * * *

(2) * * *

(ii) Root causes of error as identified on the Lead Agency's most recent ACF–404 and other root causes identified;

(iii) Detailed descriptions of actions to reduce improper payments and the individual responsible for ensuring actions are completed;

(iv) Milestones to indicate progress towards action completion and error reduction goals;

(v) A timeline for completing each action of the plan within 1 year, and for reducing the improper payment rate below the threshold established by the Secretary; and

(vi) Targets for future improper payment rates.

(3) Subsequent progress reports including updated corrective action plans must be submitted as requested by the Assistant Secretary until the Lead Agency's improper payment rate no longer exceeds the threshold.

(4) Failure to carry out actions as described in the approved corrective action plan or to fulfill requirements in this paragraph (c) will be grounds for a penalty or sanction under § 98.92.

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