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Proclamation 10625 of September 15, 2023

The President

Constitution Day and Citizenship Day, and Constitution Week, 2023

By the President of the United States of America

A Proclamation

More than two centuries ago, our Founders set in motion the most extraordinary experiment of self-government the world has ever known with three simple words: “We, the People.” These timeless words from our Constitution help capture the very idea of America—that we are all created equal and deserve to be treated equally throughout our lives. On Constitution Day and Citizenship Day, and during Constitution Week, we recommit to doing the work of upholding our Constitution, defending our democracy, and building an America that is more prosperous, more equal, and more just.

History requires us to acknowledge that we have never fully lived up to the promise of America. But we have never fully walked away from it either. Burning inside each generation of Americans is the flame of liberty lit at Independence Hall that has guided our Nation from the horrors of slavery to the justice of abolition, from the tragedy of a Civil War to the preservation of our Union, and from economic turmoil and world wars to movements for universal suffrage and civil rights. Our commitment to a Government—of, by, and for the people—has ensured that our Nation remains a citadel of liberty.

American democracy hinges on a fundamental freedom guaranteed by our Constitution: the right to vote. In our own time, as in generations past, this freedom has been under attack. The Supreme Court weakened the landmark Voting Rights Act, and States have enacted dozens of anti-voting laws in the years since. In one of the darkest moments of our Nation’s history, on January 6, 2021, we saw the violent and deadly insurrection at the Capitol perpetrated by election deniers. My Administration will not allow the right to vote and have that vote counted be taken from the American people. This year, I signed the Electoral Count Reform Act to preserve the will of the people and help protect the peaceful transfer of power. And I continue to urge the Congress to pass the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act to restore and expand voting protections and to prevent voter suppression.

But there is still more work to do. Protecting our civil rights is the duty of each and every American. In the wake of the Supreme Court’s decision to eliminate a woman’s right to choose—a constitutional right that it had recognized for nearly 50 years—my Administration took action to protect access to reproductive care, and we are continuing to call on the Congress to restore the protections of *Roe v. Wade*. As some seek to erase our history and ban books, we are making it clear that we cannot just choose to learn what we want to know and not what we should know. We must learn everything—the good, the bad, and the truth of who we are as a Nation. That is what great nations do. And we are a great Nation. The diversity that defines America is a strength, not a weakness, and we will continue to fight for the full inclusion of all Americans in the promise of America.

As we celebrate our Constitution, we also celebrate the rights and responsibilities of citizenship. We honor everyday Americans who always do extraordinary things. And we welcome our newest citizens and immigrants—many

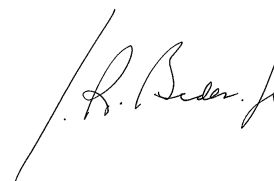
of whom left the only home they have ever known with hopes of pursuing the American Dream, bringing new energy and ideas that move our Nation forward. That is why, on day one of my Administration, I sent the Congress my plan to reform the immigration system. And until the Congress acts, we will keep using every tool we have to make immigration more orderly, safe, and humane.

America is founded on an idea—one stronger than any army, bigger than any ocean, and more powerful than any dictator or tyrant. It is the most powerful idea in the history of the world, and it beats in the hearts of the people in this country. It is the idea that America guarantees that everyone be treated with dignity. It gives hate no safe harbor. It instills in everyone the belief that, no matter where you start in life, there is nothing you cannot achieve. Whether your ancestors were native to these shores or they were brought here forcibly and enslaved—or whether they immigrated generations back, like my family from Ireland, or they just arrived in search of a better life for their families—the idea of America unites all of us. Today and every day, we celebrate this idea imagined in our Constitution and preserved through the noble labors of Americans past and present. And we reaffirm our commitment to ensuring this idea lives on for generations to come.

To honor the timeless principles enshrined in our Constitution, the Congress has, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as “Constitution Day and Citizenship Day” and authorized the President to issue a proclamation calling on United States officials to display the flag of the United States on all Government buildings on that day. By joint resolution of August 2, 1956 (36 U.S.C. 108), the Congress further requested that the President proclaim the week beginning September 17 and ending September 23 of each year as “Constitution Week.”

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 17, 2023, as Constitution Day and Citizenship Day, and September 17 through September 23 as Constitution Week. On this day and during this week, we celebrate our Constitution and the rights of citizenship that together we enjoy as the people of this proud Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Presidential Documents

Proclamation 10626 of September 15, 2023

National Farm Safety and Health Week, 2023

By the President of the United States of America

A Proclamation

America's farmers, farmworkers, and ranchers are the backbone of our Nation. They feed our families, power much of our economy, and help America lead the world. We owe them the dignity and certainty of knowing they are safe on the job. During National Farm Safety and Health Week, we renew our Nation's commitment to protecting the well-being of everyone who works in agriculture.

The prosperity that American farms provide our Nation can come with great personal risk. Agriculture has long been one of our most dangerous industries, with nearly six times as many fatalities as other industries, often due to tractor rollovers and road accidents while moving equipment from farm to field. Heavy labor, unsafe pesticides, extreme heat and weather, volatile markets, and other uncertainties can cause stress and injury. At the same time, nearly 200 rural hospitals have closed since 2005, making it harder to find emergency treatment and health care in agricultural areas.

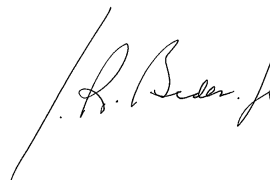
When I ran for office, I promised to be the most pro-worker President in history and to get rural communities the resources they need to keep everyone healthy and safe. My Administration has fought to keep workers safe on the job—including issuing the first-ever Heat Hazard Alert, ramping up enforcement of heat-safety violations, increasing inspections in high-risk industries like agriculture, and working toward a national standard for workplace heat-safety rules. The Department of Agriculture is investing \$500 million in American Rescue Plan funds in rural health care services so more Americans can get needed care closer to home. The Bipartisan Infrastructure Law is investing \$65 billion in broadband, boosting access to remote telehealth services. The Inflation Reduction Act is slashing health care coverage premiums and prescription drug prices for seniors. At the same time, we have proposed new rules to require health insurers to cover mental health care the way they would anything else, moving toward real mental health parity. We have opened 140 new Certified Community Behavioral Health Clinics and launched the nationwide Suicide and Crisis Lifeline (9–8–8) connecting those in crisis to trained counselors by phone, text, or chat.

Meanwhile, my Administration is also focused on growing the rural economy more broadly. We are getting States the funds they need to expand access to small and mid-sized meat and poultry processing so producers have a better shot at fair prices. We are harnessing the bioeconomy and creating new revenue streams for farmers by supporting new and innovative products, like plant-based packing materials and sustainable aviation fuels. Throughout, we are making sure small and mid-sized farmers and ranchers have a chance to succeed right where they are from so the wealth they generate stays in their communities and their children can keep farming, building a stronger rural economy long-term.

America's farms, farmworkers, and ranchers represent the best of our Nation. Working together, we can make sure they have all they need to live healthy and safe lives.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 17 through September 23, 2023, as National Farm Safety and Health Week. I call upon the people of the United States—including America's farmers; ranchers; and agriculture-related institutions, organizations, and businesses—to reaffirm a dedication to farm safety and health. I also urge all Americans to express appreciation and gratitude to our farmers, farmworkers, and ranchers for their tireless service to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

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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.

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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and Qualified Mortgages)

AGENCY: Consumer Financial Protection Bureau.

ACTION: Final rule; official interpretation.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is issuing this final rule amending the regulation text and official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). The CFPB calculates the dollar amounts for several provisions in Regulation Z annually; this final rule revises, as applicable, the dollar amounts for provisions implementing TILA and amendments to TILA, including under the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The CFPB is adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index (CPI) in effect on June 1, 2023.

DATES: This final rule is effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Anna Boadwee and Adrien Fernandez, Attorney-Advisors, Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The CFPB is amending the regulation text and official interpretations for Regulation Z, which implements TILA, to update the dollar amounts of various thresholds that it must adjust annually to reflect the annual percentage change in the CPI as published by the Bureau of Labor

Statistics (BLS). Specifically, for open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at \$1.00 in 2024. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2024 will be \$26,092. The adjusted points-and-fees dollar trigger for high-cost mortgages in 2024 will be \$1,305. For qualified mortgages (QMs) under the General QM loan definition in § 1026.43(e)(2), the thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR)¹ in 2024 will be: 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$130,461; 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$78,277 but less than \$130,461; 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than \$78,277; 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than \$130,461; 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to \$78,277; or 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than \$78,277. For all categories of QMs, the thresholds for total points and fees in 2024 will be 3 percent of the total loan amount for a loan greater than or equal to \$130,461; \$3,914 for a loan amount greater than or equal to \$78,277 but less than \$130,461; 5 percent of the total loan amount for a loan greater than or equal to \$26,092 but less than \$78,277; \$1,305 for a loan amount greater than or

¹ On April 20, 2023, the CFPB published a document announcing the availability of a revised version of its “Methodology for Determining Average Prime Offer Rates,” which describes the data and methodology used to calculate the average prime offer rate for purposes of Regulation C and Regulation Z. See 88 FR 24393. The methodology statement was revised to address the imminent unavailability of certain data the CFPB previously relied on to calculate average prime offer rates, as a result of a decision by Freddie Mac to make changes to its Primary Mortgage Market Survey® (PMMS). After evaluating potential sources, the CFPB determined that data from Intercontinental Exchange Mortgage Technology (ICE Mortgage Technology) is currently the most suitable option to replace PMMS. Beginning on April 24, 2023, the CFPB started using data provided by ICE Mortgage Technology and the revised methodology to calculate average prime offer rates.

equal to \$16,308 but less than \$26,092; and 8 percent of the total loan amount for a loan amount less than \$16,308.²

I. Background

A. Credit Card Annual Adjustments

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of Regulation Z implement sections 127(a)(3) and 127(c)(1)(A)(ii)(II) of TILA. Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) require creditors to disclose any minimum interest charge exceeding \$1.00 that could be imposed during a billing cycle. These provisions also state that, for open-end consumer credit plans, the CFPB shall calculate the minimum interest charge thresholds annually using the CPI that was in effect on the preceding June 1; the CFPB uses the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for this adjustment.³ If the cumulative change in the adjusted minimum value derived from applying the annual CPI-W level to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) has risen by a whole dollar, the CFPB will increase the minimum interest charge amounts set forth in the regulation by \$1.00. The CFPB bases its 2024 adjustment analysis on the CPI-W index in effect on June 1, 2023, as reported by BLS on May 10, 2023.⁴ As a result, the adjustment reflects the percentage change in the CPI-W from April 2022 to April 2023. The adjustment analysis accounts for a 4.6 percent increase in the CPI-W from April 2022 to April 2023. This increase in the CPI-W when applied to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) does not trigger an increase in the minimum interest charge threshold of at least \$1.00, and the CFPB, therefore, is not amending §§ 1026.6(b)(2)(iii) and 1026.60(b)(3).

² The QM categories in Regulation Z appear at 12 CFR 1026.43(e)(2), (e)(4), (e)(5), (e)(6), and (e)(7). Note that 12 CFR 1026.43(e)(6) applies only to covered transactions for which the application was received before April 1, 2016.

³ The CPI-W is a subset of the Consumer Price Index for All Urban Consumers (CPI-U) index and represents approximately 30 percent of the U.S. population.

⁴ BLS publishes Consumer Price Indices monthly, usually in the middle of each calendar month. Thus, the CPI-W reported on May 10, 2023, was the most current as of June 1, 2023.

B. HOEPA Annual Threshold Adjustments

Section 1026.32(a)(1)(ii) of Regulation Z implements section 1431 of the Dodd-Frank Act,⁵ which amended the HOEPA points-and-fees coverage test. Under § 1026.32(a)(1)(ii)(A) and (B), in assessing whether a transaction is a high-cost mortgage due to points and fees the creditor is charging, the applicable points-and-fees coverage test depends on whether the total loan amount is for \$20,000 or more, or for less than \$20,000. Section 1026.32(a)(1)(ii) provides that the CFPB recalculate this threshold amount annually using the CPI index in effect on the preceding June 1; the CFPB uses the CPI-U for this adjustment.⁶ The CFPB bases the 2024 adjustment on the CPI-U index in effect on June 1, 2023, as reported by BLS on May 10, 2023. As a result, the adjustment reflects the percentage change in the CPI-U from April 2022 to April 2023, which is an increase of 4.9 percent. The adjustment to \$26,092 here reflects the 4.9 percent increase in the CPI-U index from April 2022 to April 2023 rounded to the nearest whole dollar amount for ease of compliance.

Under § 1026.32(a)(1)(ii)(B), the HOEPA points-and-fees threshold is the lesser of 8 percent of the total loan amount or \$1,000. Section 1026.32(a)(1)(ii)(B) provides that the CFPB will recalculate the dollar amount threshold annually using the CPI index in effect on the preceding June 1; the CFPB uses the CPI-U for this adjustment. The CFPB bases the 2024 adjustment on the CPI-U index in effect on June 1, 2023, as reported by BLS on May 10, 2023. As a result, the adjustment reflects the percentage change in CPI-U from April 2022 to April 2023, which is an increase of 4.9 percent. The adjustment to \$1,305 here reflects the 4.9 percent increase in the CPI-U index from April 2022 to April 2023 rounded to the nearest whole dollar amount for ease of compliance.

C. QM Annual Threshold Adjustments

The CFPB's Regulation Z implements sections 1411 and 1412 of the Dodd-Frank Act, which generally require creditors to make a reasonable, good-faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling and establishes certain protections from

liability under this requirement for QMs.

On December 10, 2020, the CFPB issued a final rule amending the General QM loan definition in § 1026.43(e)(2).⁷ The final rule established pricing thresholds in § 1026.43(e)(2)(vi)(A) through (F) based on the spread of a loan's APR compared to the APOR for a comparable transaction as of the date the interest rate is set. To satisfy the General QM loan definition, a loan's APR must be below the applicable pricing threshold and must satisfy other requirements in § 1026.43(e)(2). Specifically, under § 1026.43(e)(2)(vi), a covered transaction is a QM if the APR does not exceed the APOR for a comparable transaction as of the date the interest rate is set by: 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$110,260 (indexed for inflation); 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$66,156 (indexed for inflation) but less than \$110,260 (indexed for inflation); 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than \$66,156 (indexed for inflation); 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than \$110,260 (indexed for inflation); 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to \$66,156 (indexed for inflation); or 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than \$66,156 (indexed for inflation).⁸ The rule states that the CFPB will adjust the loan amounts in § 1026.43(e)(2)(vi) annually on January 1 by the annual percentage change in the CPI-U that was in effect on the preceding June 1.⁹

Regulation Z also contains points and fees limits applicable to all categories of QMs. Under § 1026.43(e)(3)(i), a covered transaction is not a QM if the transaction's total points and fees exceed: 3 percent of the total loan amount for a loan amount greater than or equal to \$100,000 (indexed for inflation); \$3,000 (indexed for inflation) for a loan amount greater than or equal

to \$60,000 (indexed for inflation) but less than \$100,000 (indexed for inflation); 5 percent of the total loan amount for loans greater than or equal to \$20,000 (indexed for inflation) but less than \$60,000 (indexed for inflation); \$1,000 (indexed for inflation) for a loan amount greater than or equal to \$12,500 (indexed for inflation) but less than \$20,000 (indexed for inflation); or 8 percent of the total loan amount for loans less than \$12,500 (indexed for inflation). Section 1026.43(e)(3)(ii) provides that the CFPB will recalculate the limits and loan amounts in § 1026.43(e)(3)(i) annually for inflation using the CPI-U index in effect on the preceding June 1.

The CFPB bases the 2024 adjustment to the loan amounts applicable to the pricing thresholds for the General QM loan definition and the points and fees limits for all categories of QM on the CPI-U index in effect on June 1, 2023, as reported by BLS on May 10, 2023. As a result, the adjustment reflects the percentage change in CPI-U from April 2022 to April 2023, which is an increase of 4.9 percent. The 2024 adjustment¹⁰ adopted here reflects a 4.9 percent increase in the CPI-U index for this period rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

A. Credit Card Annual Adjustments

Minimum Interest Charge Disclosure Thresholds—§§ 1026.6(b)(2)(iii) and 1026.60(b)(3)

The minimum interest charge amounts for §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) will remain unchanged at

¹⁰ For 2024, a covered transaction is a qualified mortgage if the APR does not exceed the APOR for a comparable transaction as of the date the interest rate is set by: 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$130,461; 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$78,277 but less than \$130,461; 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than \$130,461; 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to \$78,277; or 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than \$78,277. Additionally, a covered transaction is not a qualified mortgage if the transaction's total points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to \$130,461; \$3,914 for a loan amount greater than or equal to \$78,277 but less than \$130,461; 5 percent of the total loan amount for loans greater than or equal to \$26,092 but less than \$78,277; \$1,305 for a loan amount greater than or equal to \$16,308 but less than \$26,092; or 8 percent of the total loan amount for loans less than \$16,308.

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

⁶ The CPI-U is based on all urban consumers and represents approximately 93 percent of the U.S. population.

⁷ 85 FR 86308 (Dec. 29, 2020). This final rule was initially effective on March 1, 2021, with a mandatory compliance date of July 1, 2021. On April 27, 2021, the CFPB issued a final rule effective June 30, 2021, which extended the mandatory compliance date of the final rule published on December 29, 2020, at 85 FR 86308, until October 1, 2022. 86 FR 22844 (Apr. 30, 2021).

⁸ The loan amounts in the regulatory text reflect the CPI-U in effect on June 1, 2020.

⁹ See comment 43(e)(2)(vi)–3.

\$1.00 for the year 2024. Accordingly, the CFPB is not amending these sections of Regulation Z.

B. HOEPA Annual Threshold Adjustment—Comments 32(a)(1)(ii)–1 and –3

Effective January 1, 2024, for purposes of determining under § 1026.32(a)(1)(ii) the points-and-fees coverage test under HOEPA to which a transaction is subject, the total loan amount threshold figure is \$26,092, and the adjusted points-and-fees dollar trigger under § 1026.32(a)(1)(ii)(B) is \$1,305. If the total loan amount for a transaction is \$26,092 or more, and the points-and-fees amount exceeds 5 percent of the total loan amount, the transaction is a high-cost mortgage. If the total loan amount for a transaction is less than \$26,092, and the points-and-fees amount exceeds the lesser of the adjusted points-and-fees dollar trigger of \$1,305 or 8 percent of the total loan amount, the transaction is a high-cost mortgage. The CFPB is amending comments 32(a)(1)(ii)–1 and –3, which list the adjustments for each year, to reflect for 2024 the new points-and-fees dollar trigger and the new loan amount dollar threshold, respectively.

C. Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2024, to satisfy § 1026.43(e)(2)(vi) under the General QM loan definition, the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts: 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$130,461; 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to \$78,277 but less than \$130,461; 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than \$78,277; 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than \$130,461; 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to \$78,277; or 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than \$78,277. Accordingly, the CFPB is amending comment 43(e)(2)(vi)–3, which lists the adjustments for each year, to reflect the new dollar threshold amounts for § 1026.43(e)(2)(vi)(A) through (F).

Effective January 1, 2024, a covered transaction is not a qualified mortgage

if, pursuant to § 1026.43(e)(3), the transaction's total points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to \$130,461; \$3,914 for a loan amount greater than or equal to \$78,277 but less than \$130,461; 5 percent of the total loan amount for loans greater than or equal to \$26,092 but less than \$78,277; \$1,305 for a loan amount greater than or equal to \$16,308 but less than \$26,092; or 8 percent of the total loan amount for loans less than \$16,308. The CFPB is amending comment 43(e)(3)(ii)–1, which lists the adjustments for each year, to reflect the new dollar threshold amounts for 2024.

III. Procedural Requirements

A. Administrative Procedure Act

The Administrative Procedure Act does not require notice and opportunity for public comment if an agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.¹¹ Pursuant to this final rule, the CFPB adds comments 32(a)(1)(ii)–1.ix, 32(a)(1)(ii)–3.ix, 43(e)(2)(vi)–3.ii, and 43(e)(3)(ii)–1.ix to update the exemption thresholds. The amendments in this final rule are technical and non-discretionary, as they merely apply the method previously established in Regulation Z for determining adjustments to the thresholds. For these reasons, the CFPB has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments, therefore, are adopted in final form.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹² As noted previously, the CFPB has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirement relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

The information collections contained in Regulation Z which implements TILA are approved by OMB under Control number 3170–0015. The current approval for this control number expires on May 31st, 2026. In accordance with the Paperwork Reduction Act of 1995,¹³ the CFPB reviewed this final rule. The CFPB has determined that this rule does

not create any new information collections or substantially revise any existing collections.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the CFPB will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *ET SEQ.*

■ 2. In Supplement I to Part 1026:

- a. Under *Section 1026.32—Requirements for High-Cost Mortgages*, revise *Paragraph 32(a)(1)(ii)*; and
- b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*, revise *Paragraph 43(e)(2)(vi)* and *Paragraph 43(e)(3)(ii)*.

The revisions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Section 1026.32—Requirements for High-Cost Mortgages

* * * * *

Paragraph 32(a)(1)(ii).

1. *Annual adjustment of \$1,000 amount.* The \$1,000 figure in § 1026.32(a)(1)(ii)(B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, \$1,020, reflecting a 2 percent increase in the CPI–U from June 2013 to June 2014, rounded to the nearest whole dollar.

ii. For 2016, \$1,017, reflecting a 0.2 percent decrease in the CPI–U from June 2014 to June 2015, rounded to the nearest whole dollar.

iii. For 2017, \$1,029, reflecting a 1.1 percent increase in the CPI–U from June 2015

¹¹ 5 U.S.C. 553(b)(B).

¹² 5 U.S.C. 603(a), 604(a).

¹³ 44 U.S.C. 3506; 5 CFR part 1320.

to June 2016, rounded to the nearest whole dollar.

iv. For 2018, \$1,052, reflecting a 2.2 percent increase in the CPI-U from June 2016 to June 2017, rounded to the nearest whole dollar.

v. For 2019, \$1,077, reflecting a 2.5 percent increase in the CPI-U from June 2017 to June 2018, rounded to the nearest whole dollar.

vi. For 2020, \$1,099, reflecting a 2 percent increase in the CPI-U from June 2018 to June 2019, rounded to the nearest whole dollar.

vii. For 2021, \$1,103, reflecting a 0.3 percent increase in the CPI-U from June 2019 to June 2020, rounded to the nearest whole dollar.

viii. For 2022, \$1,148, reflecting a 4.2 percent increase in the CPI-U from June 2020 to June 2021, rounded to the nearest whole dollar.

ix. For 2023, \$1,243, reflecting an 8.3 percent increase in the CPI-U from June 2021 to June 2022, rounded to the nearest whole dollar.

x. For 2024, \$1,305, reflecting a 4.9 percent increase in the CPI-U from June 2022 to June 2023, rounded to the nearest whole dollar.

2. *Historical adjustment of \$400 amount.* Prior to January 10, 2014, a mortgage loan was covered by § 1026.32 if the total points and fees payable by the consumer at or before loan consummation exceeded the greater of \$400 or 8 percent of the total loan amount. The \$400 figure was adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1, as follows:

i. For 1996, \$412, reflecting a 3 percent increase in the CPI-U from June 1994 to June 1995, rounded to the nearest whole dollar.

ii. For 1997, \$424, reflecting a 2.9 percent increase in the CPI-U from June 1995 to June 1996, rounded to the nearest whole dollar.

iii. For 1998, \$435, reflecting a 2.5 percent increase in the CPI-U from June 1996 to June 1997, rounded to the nearest whole dollar.

iv. For 1999, \$441, reflecting a 1.4 percent increase in the CPI-U from June 1997 to June 1998, rounded to the nearest whole dollar.

v. For 2000, \$451, reflecting a 2.3 percent increase in the CPI-U from June 1998 to June 1999, rounded to the nearest whole dollar.

vi. For 2001, \$465, reflecting a 3.1 percent increase in the CPI-U from June 1999 to June 2000, rounded to the nearest whole dollar.

vii. For 2002, \$480, reflecting a 3.27 percent increase in the CPI-U from June 2000 to June 2001, rounded to the nearest whole dollar.

viii. For 2003, \$488, reflecting a 1.64 percent increase in the CPI-U from June 2001 to June 2002, rounded to the nearest whole dollar.

ix. For 2004, \$499, reflecting a 2.22 percent increase in the CPI-U from June 2002 to June 2003, rounded to the nearest whole dollar.

x. For 2005, \$510, reflecting a 2.29 percent increase in the CPI-U from June 2003 to June 2004, rounded to the nearest whole dollar.

xi. For 2006, \$528, reflecting a 3.51 percent increase in the CPI-U from June 2004 to June 2005, rounded to the nearest whole dollar.

xii. For 2007, \$547, reflecting a 3.55 percent increase in the CPI-U from June 2005 to June 2006, rounded to the nearest whole dollar.

xiii. For 2008, \$561, reflecting a 2.56 percent increase in the CPI-U from June 2006 to June 2007, rounded to the nearest whole dollar.

xiv. For 2009, \$583, reflecting a 3.94 percent increase in the CPI-U from June 2007 to June 2008, rounded to the nearest whole dollar.

xv. For 2010, \$579, reflecting a 0.74 percent decrease in the CPI-U from June 2008 to June 2009, rounded to the nearest whole dollar.

xvi. For 2011, \$592, reflecting a 2.2 percent increase in the CPI-U from June 2009 to June 2010, rounded to the nearest whole dollar.

xvii. For 2012, \$611, reflecting a 3.2 percent increase in the CPI-U from June 2010 to June 2011, rounded to the nearest whole dollar.

xviii. For 2013, \$625, reflecting a 2.3 percent increase in the CPI-U from June 2011 to June 2012, rounded to the nearest whole dollar.

xix. For 2014, \$632, reflecting a 1.1 percent increase in the CPI-U from June 2012 to June 2013, rounded to the nearest whole dollar.

3. *Applicable threshold.* For purposes of § 1026.32(a)(1)(ii), a creditor must determine the applicable points and fees threshold based on the face amount of the note (or, in the case of an open-end credit plan, the credit limit for the plan when the account is opened). However, the creditor must apply the allowable points and fees percentage to the “total loan amount,” as defined in § 1026.32(b)(4). For closed-end credit transactions, the total loan amount may be different than the face amount of the note. The \$20,000 amount in § 1026.32(a)(1)(ii)(A) and (B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1.

i. For 2015, \$20,391, reflecting a 2 percent increase in the CPI-U from June 2013 to June 2014, rounded to the nearest whole dollar.

ii. For 2016, \$20,350, reflecting a .2 percent decrease in the CPI-U from June 2014 to June 2015, rounded to the nearest whole dollar.

iii. For 2017, \$20,579, reflecting a 1.1 percent increase in the CPI-U from June 2015 to June 2016, rounded to the nearest whole dollar.

iv. For 2018, \$21,032, reflecting a 2.2 percent increase in the CPI-U from June 2016 to June 2017, rounded to the nearest whole dollar.

v. For 2019, \$21,549, reflecting a 2.5 percent increase in the CPI-U from June 2017 to June 2018, rounded to the nearest whole dollar.

vi. For 2020, \$21,980, reflecting a 2 percent increase in the CPI-U from June 2018 to June 2019, rounded to the nearest whole dollar.

vii. For 2021, \$22,052 reflecting a 0.3 percent increase in the CPI-U from June 2019 to June 2020, rounded to the nearest whole dollar.

viii. For 2022, \$22,969 reflecting a 4.2 percent increase in the CPI-U from June 2020 to June 2021, rounded to the nearest whole dollar.

ix. For 2023, \$24,866 reflecting an 8.3 percent increase in the CPI-U from June 2021 to June 2022, rounded to the nearest whole dollar.

x. For 2024, \$26,092, reflecting a 4.9 percent increase in the CPI-U from June 2022

to June 2023, rounded to the nearest whole dollar.

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Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

Paragraph 43(e)(2)(vi).

1. *Determining the average prime offer rate for a comparable transaction as of the date the interest rate is set.* For guidance on determining the average prime offer rate for a comparable transaction as of the date the interest rate is set, see comments 43(b)(4)–1 through –3.

2. *Determination of applicable threshold.* A creditor must determine the applicable threshold by determining which category the loan falls into based on the face amount of the note (the “loan amount” as defined in § 1026.43(b)(5)). For example, for a first-lien covered transaction with a loan amount of \$75,000, the loan would fall into the tier for loans greater than or equal to \$66,156 (indexed for inflation) but less than \$110,260 (indexed for inflation), for which the applicable threshold is 3.5 or more percentage points.

3. *Annual adjustment for inflation.* The dollar amounts in § 1026.43(e)(2)(vi) will be adjusted annually on January 1 by the annual percentage change in the CPI-U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2022, reflecting a 4.2 percent increase in the CPI-U that was reported on the preceding June 1, to satisfy § 1026.43(e)(2)(vi), the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts:

A. For a first-lien covered transaction with a loan amount greater than or equal to \$114,847, 2.25 or more percentage points;

B. For a first-lien covered transaction with a loan amount greater than or equal to \$68,908 but less than \$114,847, 3.5 or more percentage points;

C. For a first-lien covered transaction with a loan amount less than \$68,908, 6.5 or more percentage points;

D. For a first-lien covered transaction secured by a manufactured home with a loan amount less than \$114,847, 6.5 or more percentage points;

E. For a subordinate-lien covered transaction with a loan amount greater than or equal to \$68,908, 3.5 or more percentage points;

F. For a subordinate-lien covered transaction with a loan amount less than \$68,908, 6.5 or more percentage points.

ii. For 2023, reflecting an 8.3 percent increase in the CPI-U that was reported on the preceding June 1, to satisfy § 1026.43(e)(2)(vi), the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts:

A. For a first-lien covered transaction with a loan amount greater than or equal to \$124,331, 2.25 or more percentage points;

B. For a first-lien covered transaction with a loan amount greater than or equal to

\$74,599 but less than \$124,331, 3.5 or more percentage points;

C. For a first-lien covered transaction with a loan amount less than \$74,599, 6.5 or more percentage points;

D. For a first-lien covered transaction secured by a manufactured home with a loan amount less than \$124,331, 6.5 or more percentage points;

E. For a subordinate-lien covered transaction with a loan amount greater than or equal to \$74,599, 3.5 or more percentage points;

F. For a subordinate-lien covered transaction with a loan amount less than \$74,599, 6.5 or more percentage points.

iii. For 2024, reflecting a 4.9 percent increase in the CPI-U that was reported on the preceding June 1, to satisfy § 1026.43(e)(2)(vi), the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts:

A. For a first-lien covered transaction with a loan amount greater than or equal to \$130,461, 2.25 or more percentage points;

B. For a first-lien covered transaction with a loan amount greater than or equal to \$78,277 but less than \$130,461, 3.5 or more percentage points;

C. For a first-lien covered transaction with a loan amount less than \$78,277, 6.5 or more percentage points;

D. For a first-lien covered transaction secured by a manufactured home with a loan amount less than \$130,461, 6.5 or more percentage points;

E. For a subordinate-lien covered transaction with a loan amount greater than or equal to \$78,277, 3.5 or more percentage points;

F. For a subordinate-lien covered transaction with a loan amount less than \$78,277, 6.5 or more percentage points.

4. *Determining the annual percentage rate for certain loans for which the interest rate may or will change.*

i. *In general.* The commentary to § 1026.17(c)(1) and other provisions in subpart C address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in § 1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under § 1026.32(a)(1)(i). Section 1026.43(e)(2)(vi) requires, for the purposes of § 1026.43(e)(2)(vi), a different determination of the annual percentage rate for a qualified mortgage under § 1026.43(e)(2) for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. An identical special rule for determining the annual percentage rate for such a loan also applies for purposes of § 1026.43(b)(4).

ii. *Loans for which the interest rate may or will change.* Section 1026.43(e)(2)(vi) includes a special rule for determining the annual percentage rate for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. This rule applies to adjustable-rate mortgages that have a fixed-rate period of five years or less and to step-rate mortgages for which the

interest rate changes within that five-year period.

iii. *Maximum interest rate during the first five years.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, a creditor must treat the maximum interest rate that could apply at any time during that five-year period as the interest rate for the full term of the loan to determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi), regardless of whether the maximum interest rate is reached at the first or subsequent adjustment during the five-year period. For additional instruction on how to determine the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due, see comments 43(e)(2)(iv)–3 and –4.

iv. *Treatment of the maximum interest rate in determining the annual percentage rate.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, the creditor must determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi) by treating the maximum interest rate that may apply within the first five years as the interest rate for the full term of the loan. For example, assume an adjustable-rate mortgage with a loan term of 30 years and an initial discounted rate of 5.0 percent that is fixed for the first three years. Assume that the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 7.0 percent. Pursuant to § 1026.43(e)(2)(vi), the creditor must determine the annual percentage rate based on an interest rate of 7.0 percent applied for the full 30-year loan term.

5. *Meaning of a manufactured home.* For purposes of § 1026.43(e)(2)(vi)(D), manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development (HUD) establishing manufactured home construction and safety standards (24 CFR 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of § 1026.43(e)(2)(vi)(D).

6. *Scope of threshold for transactions secured by a manufactured home.* The threshold in § 1026.43(e)(2)(vi)(D) applies to first-lien covered transactions less than \$110,260 (indexed for inflation) that are secured by a manufactured home and land, or by a manufactured home only.

* * * * *

Paragraph 43(e)(3)(ii).

1. *Annual adjustment for inflation.* The dollar amounts, including the loan amounts, in § 1026.43(e)(3)(i) will be adjusted annually on January 1 by the annual percentage change in the CPI-U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, reflecting a 2 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to \$101,953: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$61,172 but less than \$101,953: \$3,059;

C. For a loan amount greater than or equal to \$20,391 but less than \$61,172: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$12,744 but less than \$20,391: \$1,020;

E. For a loan amount less than \$12,744: 8 percent of the total loan amount.

ii. For 2016, reflecting a 0.2 percent decrease in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to \$101,749: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$61,050 but less than \$101,749: \$3,052;

C. For a loan amount greater than or equal to \$20,350 but less than \$61,050: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$12,719 but less than \$20,350: \$1,017;

E. For a loan amount less than \$12,719: 8 percent of the total loan amount.

iii. For 2017, reflecting a 1.1 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to \$102,894: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$61,737 but less than \$102,894: \$3,087;

C. For a loan amount greater than or equal to \$20,579 but less than \$61,737: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$12,862 but less than \$20,579: \$1,029;

E. For a loan amount less than \$12,862: 8 percent of the total loan amount.

iv. For 2018, reflecting a 2.2 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed;

A. For a loan amount greater than or equal to \$105,158: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$63,095 but less than \$105,158: \$3,155;

C. For a loan amount greater than or equal to \$21,032 but less than \$63,095: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$13,145 but less than \$21,032: \$1,052;

E. For a loan amount less than \$13,145: 8 percent of the total loan amount.

v. For 2019, reflecting a 2.5 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed;

A. For a loan amount greater than or equal to \$107,747: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$64,648 but less than \$107,747: \$3,232;

C. For a loan amount greater than or equal to \$21,549 but less than \$64,648: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$13,468 but less than \$21,549: \$1,077;

E. For a loan amount less than \$13,468: 8 percent of the total loan amount.

vi. For 2020, reflecting a 2 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to \$109,898: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$65,939 but less than \$109,898: \$3,297;

C. For a loan amount greater than or equal to \$21,980 but less than \$65,939: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$13,737 but less than \$21,980: \$1,099;

E. For a loan amount less than \$13,737: 8 percent of the total loan amount.

vii. For 2021, reflecting a 0.3 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to \$110,260: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$66,156 but less than \$110,260: \$3,308;

C. For a loan amount greater than or equal to \$22,052 but less than \$66,156: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$13,783 but less than \$22,052: \$1,103;

E. For a loan amount less than \$13,783: 8 percent of the total loan amount.

viii. For 2022, reflecting a 4.2 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to \$114,847: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$68,908 but less than \$114,847: \$3,445;

C. For a loan amount greater than or equal to \$22,969 but less than \$68,908: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$14,356 but less than \$22,969: \$1,148;

E. For a loan amount less than \$14,356: 8 percent of the total loan amount.

ix. For 2023, reflecting an 8.3 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to \$124,331: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$74,599 but less than \$124,331: \$3,730;

C. For a loan amount greater than or equal to \$24,866 but less than \$74,599: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$15,541 but less than \$24,866: \$1,243;

E. For a loan amount less than \$15,541: 8 percent of the total loan amount.

x. For 2024, reflecting a 4.9 percent increase in the CPI-U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to \$130,461: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to \$78,277 but less than \$130,461: \$3,914;

C. For a loan amount greater than or equal to \$26,092 but less than \$78,277: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to \$16,308 but less than \$26,092: \$1,305;

E. For a loan amount less than \$16,308: 8 percent of the total loan amount.

* * * * *

Brian Shearer,

Senior Advisor, Consumer Financial Protection Bureau.

[FR Doc. 2023-20476 Filed 9-20-23; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1212; Project Identifier MCAI-2022-00423-E; Amendment 39-22538; AD 2023-17-12]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co. KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd. & Co. KG (RRD) Model RB211 Trent 768-60, 772-60, and 772B-60 engines. This AD was prompted by reports of cracks on affected intermediate-pressure compressor (IPC) rotor shaft balance lands. This AD requires repetitive on-wing or in-shop borescope inspections (BSIs) of the affected IPC rotor shaft balance land for cracks and replacement of any IPC rotor shaft if necessary and prohibits the installation of an affected IPC rotor shaft on any engine, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 26, 2023.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of October 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2023-1212; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at *regulations.gov* under Docket No. FAA-2023-1212.

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7241; email: sungmo.d.cho@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all RRD Model RB211 Trent 768-60, 772-60, and 772B-60 engines. The NPRM published in the **Federal Register** on June 14, 2023 (88 FR 38759). The NPRM was prompted by AD 2022-0055, dated March 23, 2022 (EASA AD 2022-0055) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that cracking on the IPC rotor shaft balance land has been historically observed on RRD Model Trent 700 engines. To address this unsafe condition, Rolls-Royce plc (RR) originally developed Modification 72-AG402, which introduced a revised balancing method that removed the original balancing weights from the IPC rotor shaft balance land and published RR Service Bulletin (SB) RB.211-72-

AG402 to provide instructions for an in-service modification. In addition, RR published Non-Modification Service Bulletin (NMSB) RB.211-72-AG085, Revision 3, dated August 27, 2021, to provide instructions for an in-shop eddy current inspection (ECI) of the IPC rotor shaft balance land. Consequently, EASA issued EASA AD 2018-0049R2, dated September 13, 2021 (EASA AD 2018-0049R2).

Since EASA issued EASA AD 2018-0049R2, RR determined that some RRD Model Trent 700 engines (post-RR SB RB.211-72-AG402) were not inspected in accordance with RR NMSB RB.211-72-AG085 during engine refurbishment due to the policy applied previously from RR NMSB RB.211-72-AG085, Revision 2. RR identified the affected batch of IPC rotor shaft balance lands and published RR NMSB RB.211-72-AK706, Initial Issue, dated November 24, 2021, which describes procedures to perform a BSI of the IPC rotor shaft balance land until the in-shop ECI is accomplished in accordance with RR NMSB RB.211-72-AG085. To address this, EASA issued the MCAI.

In the NPRM, the FAA proposed to require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text. The FAA is issuing this

AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1212.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022-0055, which specifies procedures for

performing repetitive on-wing or in-shop BSIs of the IPC rotor shaft balance land and, if any discrepancies are detected, accomplishing the applicable corrective actions or replacing the IPC rotor shaft. The MCAI also specifies prohibiting the installation of an affected IPC rotor shaft on any engine and that accomplishing an in-shop ECI of the IPC rotor shaft balance land or replacing the IPC rotor shaft constitutes as terminating action for the repetitive BSIs.

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

Differences Between This AD and the MCAI

EASA AD 2022-0055 applies to RRD Model RB211 Trent 768-60, 772-60, 772B-60, and 772C-60 engines. This AD does not apply to RRD Model RB211 Trent 772C-60 engines, as this model engine does not have an FAA type certificate.

Costs of Compliance

The FAA estimates that this AD affects 62 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI of IPC rotor shaft balance land	4.50 work-hours × \$85 per hour = \$382.50 ...	\$0	\$382.50	\$23,715

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The agency has no way of determining the number of

aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace IPC rotor shaft	50 work-hours × \$85 per hour = \$4,250	\$2,120,000	\$2,124,250

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under

that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

(1) Is not a “significant regulatory action” under Executive Order 12866,
(2) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023-17-12 Rolls-Royce Deutschland Ltd. & Co. KG Engines: Amendment 39-22538; Docket No. FAA-2023-1212; Project Identifier MCAI-2022-00423-E.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co. KG Model RB211 Trent 768-60, 772-60, and 772B-60 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks on the intermediate-pressure compressor (IPC) rotor shaft balance land. The FAA is issuing this AD to detect cracks on the IPC rotor shaft balance land. The unsafe condition, if not addressed, could lead to IPC rotor shaft failure and consequent uncontained high-energy debris, possibly resulting in damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions

within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2022-0055, dated March 23, 2022 (EASA AD 2022-0055).

(h) Exceptions to EASA AD 2022-0055

(1) Where EASA AD 2022-0055 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2022-0055.

(3) Where the service information referenced in EASA AD 2022-0055 specifies to use certain tooling, equivalent tooling may be used.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022-0055 specifies to notify the manufacturer or supply pictures to the manufacturer of any cracks, dents, or nicks, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7241; email: sungmo.d.cho@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022-0055, dated March 23, 2022.

(ii) [Reserved]

(3) For EASA AD 2022-0055, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued on September 18, 2023.

Victor Wicklund,

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

[FR Doc. 2023-20485 Filed 9-20-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1159; Project Identifier AD-2022-00692-E; Amendment 39-22530; AD 2023-17-04]

RIN 2120-AA64

Airworthiness Directives; Continental Aerospace Technologies, Inc. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022-04-04 for certain Continental Aerospace Technologies, Inc. (Continental) Model C-125, C145, IO-360, IO-470, IO-550, O-300, O-470, TSIO-360, and TSIO-520 series engines and certain Continental Motors IO-520 series engines with a certain oil filter adapter installed. AD 2022-04-04 required replacing the oil filter adapter fiber gasket (fiber gasket) with an oil filter adapter copper gasket (copper gasket). This AD was prompted by reports of two accidents that were the result of power loss due to oil starvation. This AD requires replacing the fiber gasket with a copper gasket or a stainless steel embedded within polytetrafluoroethylene gasket (stainless steel PTFE gasket). This AD also revises the applicability to include Continental model engines equipped with an F&M Enterprises, Inc. (F&M) or a Stratus Tool Technologies, LLC (Stratus) oil filter adapter installed. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 26, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1159; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822-3200; website: tempestplus.com.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1159.

FOR FURTHER INFORMATION CONTACT:

George Hanlin, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474-5584; email: 9-ASO-ATLACO-ADS@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2022-04-04, Amendment 39-21945

(87 FR 9435, February 22, 2022) (AD 2022-04-04). AD 2022-04-04 applied to certain Continental Model C-125, C145, IO-360, IO-470, IO-520, IO-550, O-300, O-470, TSIO-360, TSIO-520 series engines with a certain oil filter adapter installed. The SNPRM published in the **Federal Register** on June 2, 2023 (88 FR 36258). The SNPRM was prompted by a comment from an individual commenter noting that certain engine models were missing from the applicability in the notice of proposed rulemaking (NPRM). The commenter also specified that the referenced service information in the NPRM has been revised by the manufacturer. In response to this comment, the FAA determined that additional model engines are affected by the unsafe condition and, as a result, should be added to the applicability paragraph of this AD. The FAA also discovered that certain model engines, with permold type crankcases, were inadvertently included in the applicability paragraph of the NPRM, which the FAA removed in the SNPRM. In the SNPRM, the FAA proposed to require replacing the fiber gasket with a copper or stainless steel PTFE gasket. The FAA also proposed to revise the applicability to include Continental model engines equipped with an F&M or a Stratus oil filter adapter installed per Supplemental Type Certificate SE8409SW, SE09356SC, or SE10348SC. In addition, the FAA also proposed to include the revised service information. The FAA is issuing this AD to address the unsafe condition on these products.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace fiber gasket with copper gasket or stainless steel PTFE gasket.	2.5 work-hours × \$85 per hour = \$212.50	\$34	\$246.50	\$1,552,950

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

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Stratus Mandatory Service Bulletin SB-001 Rev C, dated June 16, 2022, which specifies procedures for removing a fiber gasket and replacing it with a copper gasket, P/N AN900-28 or P/N AN900-29, or a stainless steel PTFE gasket, P/N ST07, as an improved alternative to the copper gasket.

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

Costs of Compliance

The FAA estimates that this AD affects 6,300 engines installed on airplanes of U.S. registry.

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

power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2022–04–04, Amendment 39–21945 (87 FR 9435, February 22, 2022); and

■ b. Adding the following new airworthiness directive:

2023–17–04 Continental Aerospace Technologies, Inc.: Amendment 39–22530; Docket No. FAA–2022–1159; Project Identifier AD–2022–00692–E.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2022–04–04, Amendment 39–21945 (87 FR 9435, February 22, 2022) (AD 2022–04–04).

(c) Applicability

This AD applies to Continental Aerospace Technologies, Inc. (Continental) model engines equipped with an F&M Enterprises, Inc. (F&M) or a Stratus Tool Technologies, LLC (Stratus) oil filter adapter installed per Supplemental Type Certificate SE8409SW, SE09356SC, or SE10348SC.

Note 1 to paragraph (c): These F&M and Stratus oil filter adapters are known to be installed on Continental Model C–125, C–145, GO–300, IO–360, IO–470, IO–520, IO–550, O–300, O–470, TSIO–360, and TSIO–520 series engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 8550, Reciprocating Engine Oil System.

(e) Unsafe Condition

This AD was prompted by reports of two accidents that were the result of power loss due to oil starvation. The FAA is issuing this AD to prevent loss of engine power. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Before accumulating 50 flight hours after the effective date of this AD or at the next scheduled oil change after the effective date of this AD, whichever occurs first, remove any F&M or Stratus oil filter adapter fiber gasket from service and replace it with an oil filter adapter copper gasket, part number (P/N) AN900–28 or P/N AN900–29, or a stainless steel polytetrafluoroethylene gasket, P/N ST07, as applicable, in accordance with the Compliance Instructions, paragraph 6., pages 6 through 10 (including all detailed instructions for Figure 5 through Figure 16), of Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev C, dated June 16, 2022.

(h) Installation Prohibition

After the effective date of this AD, do not install an F&M or a Stratus oil filter adapter fiber gasket on any affected engine.

(i) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev B, dated June 17, 2021, which was previously approved for IBR on March 29, 2022 (87 FR 9435, February 22, 2022), but is not incorporated by reference in this AD.

(j) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a one-time non-revenue ferry flight to operate the airplane to the nearest location where the maintenance action can be performed provided that the engine oil pressure and engine oil temperatures are in their allowable ranges and there is no noticeable increase in engine noise. This flight must be performed with no passengers on board.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification branch, send it to the attention of the person identified in paragraph (l) of this AD.

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

(3) AMOCs approved for AD 2022–04–04 are approved as AMOCs for the corresponding provisions of this AD.

(l) Additional Information

For more information about this AD, contact George Hanlin, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5584; email: 9-ASO-ATLACO-ADs@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev C, dated June 16, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822–3200; website: tempestplus.com.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on September 15, 2023.

Victor Wicklund,

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

[FR Doc. 2023–20445 Filed 9–20–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2023–1218; Project Identifier MCAI–2022–01025–A; Amendment 39–22536; AD 2023–17–10]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Vulcanair S.p.A. Model V1.0 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as corrosion on the lower fuselage truss. This AD requires a detailed visual inspection of the right-hand (RH) and left-hand (LH) lower rear attachments of the fuselage truss for

corrosion, a tactile inspection of the lower rear attachments for missing sealant, and a general visual inspection of the lower fuselage truss welded pipes for corrosion and the related rivets for missing stems and, depending on findings, additional inspections and actions (including a tap test) and applicable corrective actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 26, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 26, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1218; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Vulcanair S.p.A., via G. Pascoli, 7, 80026 Casoria (NA), Italy; phone: +39 081 5918111; email: info@vulcanair.com; website: support.vulcanair.com.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1218.

FOR FURTHER INFORMATION CONTACT: John DeLuca, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7369; email: john.p.deluca@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Vulcanair S.p.A. Model V1.0 airplanes. The NPRM published in the **Federal Register** on June 27, 2023 (88 FR 41510). The NPRM was prompted by AD 2022–0155, dated August 1, 2022 (referred to after this as

the MCAI), issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. The MCAI states that there have been reports of corrosion on the lower fuselage truss on two Vulcanair Model V1.0 airplanes. Missing sealant or missing rivet stems were determined to be the root cause of corrosion by allowing water ingress into the lower fuselage truss. In both reported cases, corrosion was externally visible, having penetrated the thickness of the pipes. However, corrosion could be present inside the pipes and remain undetected without proper inspection. This condition, if not detected and corrected, could result in loss of control of the airplane.

In the NPRM, the FAA proposed to require a detailed visual inspection of the RH and LH lower rear attachments of the fuselage truss for corrosion, a tactile inspection of the lower rear attachments for missing sealant, and a general visual inspection of the lower fuselage truss welded pipes for corrosion and the related rivets for missing stems and, depending on findings, additional inspections and actions (including a tap test) and applicable corrective actions. The FAA is issuing this AD to address the unsafe condition on these products. The unsafe condition, if not addressed, could result in loss of control of the airplane.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1218.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Vulcanair S.p.A. Service Bulletin No. VA–22, Revision 0, dated June 15, 2022 (Vulcanair SB VA–22). This service information specifies procedures for inspections of the lower fuselage truss for corrosion, missing sealant, and missing rivet stems; and, in case of findings, additional inspections and actions to detect corrosion, including a tap test and raising the airplane nose. This service information specifies to contact Vulcanair for corrective actions.

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

Differences Between This AD and the MCAI

Although Vulcanair SB VA–22, which is referenced in the MCAI, specifies that “in case of doubts, raise the aircraft nose and audibly detect the presence of corrosion residues inside the fuselage truss,” this AD does not require that action.

Paragraph (1) of the MCAI states to “accomplish a general visual and tactile inspection of the right-hand (RH) and left-hand (LH) lower rear attachments of the fuselage truss” in accordance with the instructions of Part A of Vulcanair SB VA–22. However, step 14, Part A, of Vulcanair SB VA–22 specifies to do a detailed visual inspection. In email communication between EASA and the FAA, EASA clarified that this should be a detailed visual inspection performed in accordance with the procedures specified in Vulcanair SB VA–22; therefore, this AD requires a detailed visual inspection of the RH and LH lower rear attachments of the fuselage truss for corrosion.

The MCAI requires contacting the manufacturer for approved corrective action instructions if any corrosion is found on the lower fuselage truss. This AD requires contacting either the Manager, International Validation Branch, FAA; or EASA; or Vulcanair’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Costs of Compliance

The FAA estimates that this AD affects 17 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed visual inspection and tactile inspection of the RH and LH lower rear attachments, and a general visual inspection of the pipes.	8 work-hours × \$85 per hour = \$680.	\$0	\$680	\$11,560

The FAA estimates the following costs to do any necessary actions that

would be required based on the results of the required inspections.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Remove sealant and detailed inspection of inner face of longitudinal tubes connected to lower rear attachments.	4 work-hours × \$85 per hour = \$340.	\$0	\$340
Detailed visual inspection and tap test of the lower fuselage truss pipes	4 work-hours × \$85 per hour = \$340.	0	340
Installation of plug P/N 5034–011 on RH and LH lower rear attachments	0.50 work-hour × \$85 per hour = \$42.50.	130	172.50

The corrective action instructions that may be needed as a result of these inspections could vary significantly from airplane to airplane. The FAA has no data to determine the costs to accomplish those corrective actions or the number of airplanes that might need these corrective actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–17–10 Vulcanair S.p.A.: Amendment 39–22536; Docket No. FAA–2023–1218; Project Identifier MCAI–2022–01025–A.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Vulcanair S.p.A. Model V1.0 airplanes, serial numbers (S/Ns) 1001 through 1034 inclusive, except S/Ns 1008 and 1019, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5311, Fuselage Main, Frame.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as corrosion on the lower fuselage truss. The FAA is issuing this AD to address the unsafe condition. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Within 100 hours time-in-service or 12 months after the effective date of this AD, whichever occurs first, do a detailed visual inspection of the right-hand (RH) and left-hand (LH) lower rear attachments of the fuselage truss for corrosion, a tactile inspection of the RH and LH lower rear attachments of the fuselage truss for missing sealant, a general visual inspection of the pipes on the lower fuselage truss for corrosion, and a general visual inspection of the pipes on the lower fuselage truss for rivets with missing stems, in accordance with steps 13 and 14 of Part A, in Part 2, Work Procedure, of Vulcanair S.p.A. Service Bulletin No. VA–22, Revision 0, dated June 15, 2022 (Vulcanair SB VA–22).

(1) If, during the inspections required by the introductory text of paragraph (g) of this AD, no missing sealant and no corrosion of

the LH and RH lower rear attachments are detected, and no corrosion and no missing rivet stems of the lower fuselage truss pipes are detected, before further flight, install part number (P/N) 5034–011 plugs on both the RH and LH rear attachments, in accordance with step 16 of Part A, in Part 2, Work Procedure, of Vulcanair SB VA–22. After installation of the plugs, no further action is required by this AD.

(2) If, during the inspections required by the introductory text of paragraph (g) of this AD, corrosion, missing sealant, or missing rivet stems are detected, before further flight, do the following as applicable:

(i) If corrosion or missing sealant is detected during the detailed visual inspection or tactile inspection of the RH and LH lower rear attachments, remove any sealant, and do a detailed visual inspection for corrosion in accordance with step 26 of Part B, in Part 2, Work Procedure, of Vulcanair SB VA–22.

(ii) If corrosion or missing rivet stems are detected during the general visual inspection of the lower fuselage truss pipes, do a detailed visual inspection and tap test for corrosion in accordance with steps 27 and 28 of Part B, in Part 2, Work Procedure, of Vulcanair SB VA–22.

(3) If, during any inspection required by paragraph (g)(2) of this AD, any corrosion is detected on the lower fuselage truss, before further flight, contact the Manager, International Validation Branch, FAA; or European Union Aviation Safety Agency (EASA); or Vulcanair's EASA Design Organization Approval (DOA) for corrective action instructions and do the corrective actions. If approved by the DOA, the approval must include the DOA-authorized signature.

(4) If, during the inspections required by paragraph (g)(2) of this AD, no corrosion is detected, before further flight, apply sealant on rivets with absent stems, restore as necessary the sealant inside the RH and LH lower rear attachments, and install plugs P/N 5034–011 on both the RH and LH rear attachments, in accordance with the instructions in steps 31 and 32 of Part B, in Part 2, Work Procedure, of Vulcanair SB VA–22.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD or email to: 9-AVS-AIR-730-AMOC@faa.gov. If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

(1) Refer to EASA AD 2022–0155, dated August 1, 2022, for related information. This EASA AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1218.

(2) For more information about this AD, contact John DeLuca, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7369; email: john.p.deluca@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Vulcanair S.p.A. Service Bulletin No. VA–22, Revision 0, dated June 15, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Vulcanair S.p.A., via G. Pascoli, 7, 80026 Casoria (NA), Italy; phone: +39 081 5918111; email: info@vulcanair.com; website: support.vulcanair.com.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on September 18, 2023.

Victor Wicklund,

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

[FR Doc. 2023–20481 Filed 9–20–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY–262–FOR; Docket No. OSM–2019–0014; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; partial approval of the amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, in part, amendments to the Kentucky regulatory

program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). With this amendment, Kentucky will revise its administrative regulations and make non-substantive changes such as paragraph renumbering.

DATES: This rule is effective October 23, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Field Office Director, Lexington Field Office, Telephone: (859) 260–3900. Email: mcastle@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of the Amendment
- III. OSMRE's Finding
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). Based on these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982 **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17. The regulatory authority in Kentucky is the Kentucky Energy and Environment Cabinet (herein referred to as the Cabinet).

II. Submission of the Amendment

By letter dated November 25, 2019 (Administrative Record Number KY–2004), the Cabinet submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*), docketed as KY–262–FOR. The amendment seeks to revise chapter 10:001 of title 405 of the Kentucky Administrative Regulations (KAR), *Bond and Insurance Requirements, Definitions for 405 KAR Chapter 10*. The Cabinet seeks to revise Section 1, *Definitions*, subsection (4), definition of “Adjacent area,” by adding “surface

water” to the list of resources on land located outside the affected area or permit area that could be adversely impacted by surface coal mining and reclamation operations. The Cabinet also seeks to add new subsection 26, defining “*Long term treatment*” to mean:

the use of any active or passive water treatment necessary to meet water quality effluent standards at the time a permit or any affected permit increment attains phase one (1) bond release standards as determined by the cabinet pursuant to 405 KAR 10:040.

In addition, the Cabinet has proposed certain non-substantive revisions at 405 KAR 10:001. These revisions include paragraph renumbering but do not change the administrative regulations substantively. Because these changes are non-substantive, we make no findings on them.

Additional Background Information

On November 25, 2019, in addition to submitting proposed amendment KY–262, the Cabinet also submitted a related amendment, KY–261, requiring calculation of an additional bond when a need for long term treatment is identified by the Cabinet. Both submissions, KY–261 and KY–262, were made in response to an amendment OSMRE required at section 30 CFR 917.16(p). We required the amendment after our review of Kentucky’s proposed bonding provisions under Program Amendment No. KY–256, as published in the January 29, 2018 **Federal Register** (83 FR 3948), which we found to be inadequate.

The Cabinet mentions in its submission for KY–262 that it believes the amendment submitted as KY–261 is sufficient to satisfy the requirements of SMCRA when viewed in conjunction with the definition of “*Long term treatment*” proposed in KY–262. Importantly, on May 10, 2022, we approved KY–261 with a slight modification not relevant here. See 87 FR 27938. In approving KY–261, we did not find it necessary to approve KY–262 in conjunction. Now, for reasons explained below, we are approving, in part, the changes proposed in KY–262. We are not approving the definition of “*Long term treatment*” in subsection 26.

We announced receipt of the proposed amendment in the February 25, 2020 **Federal Register** (85 FR 10633). In the same notice, we opened a public comment period and provided an opportunity for a public hearing on these provisions (Administrative Record Number KY–2004–3). The public comment period closed on March 25, 2020. We received a response from one Federal agency and one public

comment, which we addressed in the Public Comments section of part IV, Summary and Disposition of Comments, below.

III. OSMRE’s Finding

The following are the findings we made concerning the proposed Kentucky amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, which govern OSMRE approval of state programs and program amendments. We are approving the amendment in part, as described below. The full text of the approved amendment is available online at www.regulation.gov.

Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes may be found in the full text of the program amendment available at www.regulations.gov.

The Cabinet proposed to revise KAR Chapter 10:001, Bond and Insurance Requirements, Definitions for 405 KAR Chapter 10, as follows.

1. *Definition of “Adjacent area”*: The Cabinet seeks to revise Section 1, *Definitions*, subsection (4), by adding “surface water” to the list of resources that could be impacted by surface coal mining operations.

OSMRE Finding: The term “Adjacent area” arises in various places in 405 KAR Chapter 10. We are approving the revised definition because it is as stringent as the prior regulation, which is already part of Kentucky’s approved program, and it is as effective as the OSMRE regulation at 30 CFR 701.5, which defines “Adjacent area.” Previously, Kentucky’s definition of “Adjacent area” in subsection (4) encompassed land outside the affected area or permit area where “air, surface, or groundwater, fish, wildlife, vegetation, or other [protected] resources” could be adversely impacted by surface coal mining and reclamation operations. Under this rule, the definition is modified to include land where “air, surface, surface water, groundwater, fish, wildlife, vegetation, or other [protected] resources” could be adversely impacted by surface coal mining and reclamation operations. As revised, the definition specifies that surface water is also a protected resource and it makes clear, where before it was ambiguous, that the regulatory authority, when applying regulations in Chapter 10 that refer to adjacent areas, must take into account whether surface waters, in addition to the other listed resources, may be adversely impacted.

2. *Definition of “Long term treatment”*: The Cabinet seeks to add a

new subsection 26, defining “*Long term treatment*” to mean:

the use of any active or passive water treatment necessary to meet water quality effluent standards at the time a permit or any affected permit increment attains phase one (1) bond release standards as determined by the cabinet pursuant to 405 KAR 10:040.

OSMRE Finding: We are not approving this subsection of the amendment as we find it is less stringent than section 509(a) of SMCRA, 30 U.S.C. 1259(a) (Performance Bonds), which directs that the regulatory authority “assure,” upon discovery of a pollutional discharge, that bonds are adequate to cover the cost of reclamation. We reach this conclusion because the definition could be read to delay the time when the regulatory authority may declare a need for long-term treatment to the point where a permitted site “attains phase one (1) bond release standards.” The problem with this temporal limitation is that the need for long-term treatment could become apparent long before phase one bond release. We believe this falls short of the statutory requirement in section 509(a). We similarly conclude the definition is less effective than the Federal regulation at 30 CFR 800.14, which echoes section 509(a) in requiring that the bond amount “be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture.” Further, EPA has commented that the approval of this definition seems to conflate two separate areas under the Clean Water Act (CWA), those being the water quality standards and the water quality based effluent limitation under National Pollutant Discharge Elimination System (NPDES) permits. For these reasons, we are not approving the definition.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the KY–262 amendment in the proposed rule notice published in the **Federal Register** on February 25, 2020 (85 FR 10633). OSMRE received one comment. This comment is summarized and addressed below.

The Kentucky Coal Association (KCA) submitted comments in support of KY–262, stating that the revisions to the definitions of “Adjacent area” and “Long term treatment” satisfy the criteria of 30 CFR 732.15 and are in accordance with SMCRA. KCA also stated that the views of all stakeholders had been considered. KCA further stated that both definitions improve clarity

and provide certainty for both permittees and the community as a whole. KCA added that approval of the revision should resolve the ongoing “733” process between Kentucky and OSMRE and pending litigation among the Cabinet, KCA, and OSMRE concerning Kentucky’s bonding program.

OSMRE Response: We are approving the definition of “Adjacent area” and the non-substantive changes and disapproving the definition of “Long-term treatment” for the reasons stated above. While we agree with KCA that the definition of “Long-term treatment” may help to add clarity and certainty for the public, it does so in a manner that is less stringent than section 509(a) of SMCRA and less effective than the Federal regulation at 30 CFR 800.14.

Federal Agency Comments

On December 16, 2019, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky (KY–262) program (Administrative Record No. KY–2004–1). We received comments from Environmental Protection Agency.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendments that relate to air or water quality standards issued under the authority of the CWA (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Because the program amendment does not relate to air or water quality standards we sought comment, not concurrence, from EPA. EPA commented that the term “water quality effluent standards” seems to conflate two separate areas under the CWA, those being water quality standards and water quality-based effluent limitations under NPDES permits. The EPA recommends that the definition be revised to include reference to both Kentucky’s water quality standards and NPDES permit effluent limits. EPA believes that this is consistent with OSMRE’s implementing regulations that acknowledge the relationship between the CWA and SMCRA. Because we are not approving the definition of “Long-term treatment,” the revisions to that definition recommended by EPA are unnecessary.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 16, 2019, we requested comments on Kentucky (KY–262) amendment (Administrative Record Number KY–2004–1). We did not receive comments from SHPO or ACHP.

V. OSMRE’s Decision

Based on the above findings, we are approving the revised definition of “Adjacent area” in subsection 4 as well as non-substantive changes, and we are not approving the new definition for “Long-term treatment” in subsection 26, based on the fact that the proposed amendment is less stringent than section 509(a) of SMCRA and less effective than the corresponding Federal regulation at 30 CFR 800.14, which requires that bonding be adequate to ensure that the costs of treatment are covered. Kentucky’s definition of “Long-term treatment” ties the decision requiring additional bond (when a long-term pollutional discharge is discovered) to phase 1 bond release. However, once a water violation is discovered and reclamation needs have changed (*i.e.*, water treatment is now required), the operator has an obligation to treat and bond immediately. Approving this definition would potentially postpone acquisition of an additional bond to a point in time long after the discovery of a need for long-term water treatment. Therefore, we are not approving this portion of the amendment.

To implement this decision, we are amending the Federal regulations, at 30 CFR part 948, that codify decisions concerning the Kentucky program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State’s program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in

public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review, 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program and/or plan amendments is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, does not supplant this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency’s legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the Cabinet proposed.

Executive Order 13132—Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by Section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government.” Instead, this rule approves an amendment to the Kentucky program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in sections 2 and 3 of the Executive Order and with the principles of cooperative federalism set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department’s tribal consultation policy is not required. The basis for this determination is that there are no federally recognized tribes present in Kentucky, and the Kentucky program is not approved to regulate activities on Indian lands as defined by SMCRA. Indian lands under SMCRA are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d)) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Director of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared, and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied

upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
Regional Director, North Atlantic—Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 917 is amended as follows:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. In § 917.15 amend the table in paragraph (a) by adding a second entry for “November 25, 2019” at the end of the table to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
November 25, 2019	September 21, 2023	KAR Chapter 10:001 Section 1, <i>Definitions</i> , subsection (4)— <i>Adjacent area</i> .

* * * * *

■ 3. Amend § 917.17 by adding paragraph (e) to read as follows:

§ 917.17 State regulatory program amendments not approved.

(e) We are not approving the following provision of the proposed Kentucky program amendments dated November 25, 2019: KAR Chapter 10:001 Section 1, Subsection 26—Definition of “Long term treatment”.

[FR Doc. 2023–20013 Filed 9–20–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2022–OS–0142]

RIN 0790–AL62

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense (Department or DoD) is issuing a final rule to amend its regulations to exempt portions of the system of records titled CIG–16, “Inspector General Administrative Investigation Records,” (IGAIR) from certain provisions of the Privacy Act of 1974.

DATES: This rule will be effective on October 23, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; OSD.DPCLTD@mail.mil; (703) 571–0070.

SUPPLEMENTARY INFORMATION:

Discussion of Comments and Changes

The proposed rule published in the *Federal Register* (88 FR 7375–7378) on

February 3, 2023. Comments were accepted for 60 days until April 4, 2023. One comment was received which stated support for the exemption rule.

I. Background

In finalizing this rule, OSD is exempting portions of this system of records titled, CIG–16, “Inspector General Administrative Investigation Records,” from certain provisions of the Privacy Act of 1974. This system contains records of DoD Office of Inspector General mission activities such as: the identification, referral, and investigation of DoD Hotline complaints; administrative investigations of both military and civilian senior officials accused of misconduct; oversight and investigation of whistleblower reprisal cases against Service members, DoD contractor employees, and DoD civilian employees (appropriated and non-appropriated fund); and improper command referrals of Service member mental health evaluations.

II. Privacy Act Exemption

The Privacy Act allows Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including those that provide individuals with a right to request access to and amendment of their own records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process pursuant to 5 U.S.C. 553(b)(1)–(3), (c), and (e).

OSD is amending 32 CFR 310.28(c)(4) to change the system name and to exempt portions of this system of records from certain provisions of the Privacy Act because information in this system of records may also fall within the scope of the following Privacy Act exemptions: 5 U.S.C. 552a(j)(2) and (k)(1).

Regulatory Analysis

Executive Order 12866, “Regulatory Planning and Review” and *Executive Order 13563*, “Improving Regulation and Regulatory Review”

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, distribute 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. It has been determined that this rule is not a significant regulatory action under these Executive orders.

Congressional Review Act (5 U.S.C. 804(2))

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532(a)) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local and Tribal Governments in the aggregate, or by the private sector, in any one year of \$100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or Tribal Governments, nor will it affect private sector costs.

Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601 *et seq.*)

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on

a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. 3501 et seq.)

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and Tribal Governments; and other persons resulting from the collection of information by or for the Federal Government. The Act requires agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

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, preempts State law, or otherwise has federalism implications. This rule will not have a substantial effect on State and local governments.

Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian Tribal Governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 310.28 is amended by revising paragraph (c)(4) to read as follows:

§ 310.28 Office of the Inspector General (OIG) exemptions.

* * * * *

(c) * * *

(4) *System identifier and name.* CIG–16, Inspector General Administrative Investigation Records (IGAIR).

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1); (e)(2); (e)(3); (e)(4)(G), (H), and (I); (e)(5); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). This system of records is exempt from 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G) and (H); and (f) of the Privacy Act to the extent the records are subject to exemption pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). This system of records is also exempt from 5 U.S.C. 552a(e)(4)(I) to the extent the records are subject to exemption pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsections (c)(3), (d)(1), and (d)(2).*

(1) *Exemption (j)(2).* Records in this system of records may contain investigatory material compiled for criminal law enforcement purposes, including information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled during criminal law enforcement proceedings. Application of exemption (j)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties or disciplinary measures; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD’s ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others.

(2) *Exemption (k)(1).* Records in this system of records may contain information that is properly classified pursuant to executive order.

Application of exemption (k)(1) may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security.

(3) *Exemption (k)(2).* Records in this system of records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could: inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records or the accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or investigation which may impede those actions or investigations; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD’s ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others.

(4) *Exemption (k)(5).* Records in this system of records may contain information concerning investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. In some cases, such records may contain information pertaining to the identity of a source who furnished information to the Government under an express promise that the source’s identity would be held in confidence (or prior to the effective date of the Privacy Act, under an implied promise). Application of exemption (k)(5) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could identify these confidential sources who might not have otherwise come forward to assist the Government; hinder the Government’s ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring

investigations to be continuously reinvestigated.

(B) *Subsection (c)(4), (d)(3) and (4).* These subsections are inapplicable to the extent that an exemption is being claimed from subsections (d)(1) and (2). Accordingly, exemption from subsection (c)(4) is claimed pursuant to (j)(2) and exemptions from subsections (d)(3) and (d)(4) are claimed pursuant to (j)(2), (k)(1), (k)(2), and (k)(5).

(C) *Subsection (e)(1).* In the collection of information for investigatory and law enforcement purposes it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required disciplinary and prosecutorial determinations. Additionally, records within this system may be properly classified pursuant to Executive order. Accordingly, application of exemptions (j)(2), (k)(1), (k)(2), and (k)(5) may be necessary.

(D) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations. Collection of information only from the individual accused of criminal activity or misconduct could also subvert discovery of relevant evidence and subvert the course of justice. Accordingly, application of exemption (j)(2) may be necessary.

(E) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(F) *Subsection (e)(4)(G) and (H).* These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2). Accordingly, application of exemptions (j)(2), (k)(1), (k)(2), and (k)(5) may be necessary.

(G) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. Accordingly,

application of exemptions (j)(2), (k)(1), (k)(2), and (k)(5) may be necessary.

(H) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to maintain an accurate record of the investigatory activity to preserve the integrity of the investigation and satisfy various Constitutional and evidentiary requirements, such as mandatory disclosure of potentially exculpatory information in the investigative file to a defendant. It is also necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined through judicial processes. Accordingly, application of exemption (j)(2) may be necessary.

(I) *Subsection (e)(8).* To serve notice of records being made available under compulsory legal process could give persons sufficient warning to evade investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(J) *Subsection (f).* The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemptions (j)(2), (k)(1), (k)(2) and (k)(5) may be necessary.

(K) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act. Accordingly, an exemption from subsection (g) is claimed pursuant to (j)(2).

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

* * * * *

Dated: September 15, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-20434 Filed 9-20-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2023-0666]

Special Local Regulations; Marine Events Within the Captain of the Port of Charleston

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Swim around Charleston on September 24, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Captain of the Port Charleston identifies the regulated area for this event in Charleston, SC. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Captain of the Port Charleston or a designated representative.

DATES: The regulations in 33 CFR 100.704 will be enforced for the location identified in Item 9 of Table 1 to § 100.704, from 9 a.m. through 4 p.m. on September 24, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Petty Officer Adam Krukowski, Sector Charleston, Waterways Management Division, U.S. Coast Guard; 843-740-3186, email Adam.B.Krukowski@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.704, Table 1 to § 100.704, Item 9, for the Swim Around Charleston regulated area from 9 a.m. to 4 p.m. on September 24, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Captain of the Port Charleston § 100.704, specifies the location of the Swim Around Charleston as a moving safety zone including all waters 50 yards in front of the lead safety vessel preceding the first race participants, 50 yards behind the safety vessel trailing the last race participants,

and at all times extends 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley's Point on the Wando River in approximate position 32°48'49" N, 79°54'27" W, crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I-526 bridge and boat landing on the Ashley River in approximate position 32°50'14" N, 80°01'23" W. During the enforcement periods, as reflected in § 100.704(c)(1), if you are the operator of a vessel in the regulated area you must comply with directions from the Captain of the Port Charleston or a designated representative.

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

Dated: September 12, 2023.

Francis. J. DelRosso,
Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 2023–20460 Filed 9–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0712]

RIN 1625–AA00

Safety Zone, Allegheny River, Mile Markers 15.5 to 16.5, Allegheny County, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Allegheny River on September 22, 2023, at mile marker 15.5 to 16.5 from 7:30 through 9 a.m. This action is necessary to provide for the safety of life on these navigable waters during an on-land demolition. This rulemaking prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective from 7:30 through 9 a.m. on September 22, 2023.

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

0712 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 LTJG Eyobe Mills, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email Eyobe.D.Mills@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. This safety zone must be established by September 22, 2023, to provide for the safety of life on the navigable waters during a demolition, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the demolition. Vessels or people inside the safety zone have to potential of getting hit with debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impractical and contrary to the public interest because this action is necessary to ensure the safety of vessels and persons during the demolition event on September 22, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Pittsburgh (COTP) has determined that potential hazards

associated with the land-based demolition on September 22, 2023, will be a safety concern for anyone on the Allegheny River at mile marker 15.5 to 16.5. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the temporary safety zone.

IV. Discussion of the Rule

This rule establishes a safety zone from 7:30 until 9 a.m. on September 22, 2023. The safety zone will cover all navigable waters on Allegheny River, within mile marker 15.5 to 16.5. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during a land-based demolition.

No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative of the COTP. A designated representative is a commissioned, warrant, or petty officer of the Coast Guard assigned to units under the operational control of the COTP. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Broadcast Notices to Mariners or Marine Safety Information Bulletins, as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. This safety zone only impacts a 1-mile

stretch of the Allegheny River for one and a half hours on September 22, 2023. Moreover, the Coast Guard will issue LNMs, MSIBs, and/or BNMs via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission from the COTP to transit the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that only impacts 1-mile stretch of the Allegheny River for one and a half hours on September 22, 2023, on the Allegheny River. It is categorically excluded from further review under paragraph L60(A) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 165.T08–0712 to read as follows:

§ 165.T08–0712 Safety Zone; Allegheny River, Mile Markers 15.5 to 16.5, Allegheny County, PA.

(a) *Safety zone.* The following area is a safety zone: All waters of the Allegheny River, from surface to bottom, between mile markers 15.5 to 16.5.

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

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP’s representative by VHF Channel 16. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced

notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 7:30 to 9 a.m. on September 22, 2023.

Eric J. Velez,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2023–20396 Filed 9–20–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 23–62, 12–375, DA 23–638; FR ID 172388]

2023 Mandatory Data Collection for Incarcerated People's Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the *2023 IPCS Mandatory Data Collection Order*, DA 22–638, issued by the Commission's Wireline Competition Bureau (WCB) and Office Economics and Analytics (OEA) on July 26, 2023. In that *Order*, WCB and OEA adopted instructions, a reporting template, and a certification form to implement the 2023 Mandatory Data Collection related to incarcerated people's communications services (IPCS). OMB approved that data collection on September 11, 2023. The instant document is consistent with the *2023 IPCS Mandatory Data Collection Order*, which indicated that the Commission would publish notification in the **Federal Register** announcing that OMB approved the data collection and that the *2023 IPCS Mandatory Data Collection Order* would be effective on the date specified in the notice. In accordance with that *Order*, responses to the 2023 Mandatory Data Collection are due October 31, 2023.

DATES: The *2023 IPCS Mandatory Data Collection Order*, published August 3, 2023 at 88 FR 51240, including the information collection requirements adopted in that *Order*, is effective on September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Simon Solemani, Pricing Policy Division, Wireline Competition Bureau,

(202) 418–2270, or email simon.solemani@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on September 11, 2023, OMB approved, for a period of three years, the information collection requirements adopted on July 26, 2023, in the *2023 IPCS Mandatory Data Collection Order*, DA 23–638, published August 3, 2023 at 88 FR 51240. The OMB Control Number is 3060–1314. In the *2023 IPCS Mandatory Data Collection Order*, WCB and OEA directed that the requirements for the 2023 Mandatory Data Collection adopted in that *Order* would become effective on the date specified in a document published in the **Federal Register** announcing OMB approval. The Commission publishes this document as an announcement of the effective date of the *2023 IPCS Mandatory Data Collection Order*. IPSC providers' responses to the data collection are due on October 31, 2023.

If you have any comments on the 2023 Mandatory Data Collection, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20002. Please include the OMB Control Number, 3060–1314, in your correspondence. The Commission will also accept your comments via email at PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on September 11, 2023 for the information collection requirements contained in the *2023 IPCS Mandatory Data Collection Order*. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1314.

The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total data collection burdens and costs for the respondents are as follows:
OMB Control Number: 3060–1314.

OMB Approval Date: September 11, 2023.

OMB Expiration Date: September 30, 2026.

Title: Incarcerated People's Communications Services (IPCS) 2023 Mandatory Data Collection, WC Docket Nos. 23–62, 12–375, DA 23–638.

Form Numbers: FCC Form 2303(a) and FCC Form 2303(b).

Respondents: Business or other for profit.

Number of Respondents and Responses: 30 respondents; 30 responses.

Estimated Time per Response: 265 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 7,950 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617.

Needs and Uses: On March 17, 2023, the Commission released the *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23–62, 12–375, Notice of Proposed Rulemaking and Order, FCC 23–19, 88 FR 20804 (Notice of Proposed Rule Making) and 88 FR 19001 (Order), in which it began the process of implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat. 6156 (the Act). The Act expands the Commission's statutory authority to encompass “any audio or video communications service used by inmates . . . regardless of technology used.” The Act also amends section 2(b) of the Communications Act of 1934, as amended, to make clear that the Commission's jurisdiction extends to intrastate as well as interstate and international communications services used by incarcerated people.

The Act directs the Commission to “promulgate any regulations necessary to implement” the statutory provisions, including its mandate that the Commission establish a “compensation plan” ensuring that all rates and charges for IPSC “are just and reasonable,” not earlier than 18 months and not later than 24 months after its January 5, 2023 enactment. The Act also requires the

Commission to consider, as part of its implementation, the costs of “necessary” safety and security measures, as well as “differences in costs” based on facility size, or “other characteristics.” It allows the Commission to “use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider” in determining just and reasonable rates.

To ensure that it has the data needed to meet its substantive and procedural responsibilities under the Act, the Commission delegated to WCB and OEA authority to “update and restructure” the Commission’s latest mandatory data collection, the Third Mandatory Data Collection (OMB Control No. 3060–1300, Inmate Calling Services (ICS) 2022 One-Time Mandatory Data Collection), “as appropriate in light of the requirements of the new statute.” This delegation requires WCB and OEA to collect “data on all incarcerated people’s communications services from all providers of those services now subject to” the Commission’s expanded ratemaking authority, including, but not limited to, requesting “more recent data for additional years not covered by the most recent data collection.”

Pursuant to their delegated authority, WCB and OEA drafted proposed instructions, a reporting template, and a certification form for the proposed 2023 Mandatory Data Collection. Under these proposals, IPCS providers would be required to submit the required data using a reporting template that would be filed through the Commission’s electronic comment filing system (ECFS). The proposed reporting template included a Word document (Appendix A to the instructions) for responses requiring narrative information and Excel spreadsheets (Appendix B to the instructions) for responses that require specific numbers or information. IPCS providers would also be required to submit an audited financial statement or report for 2022, and a signed certification of truthfulness, accuracy, and completeness. The proposed instructions, reporting template, and certification form would simplify compliance with, and reduce the burden of, this data collection.

On April 28, 2023, WCB and OEA released the *2023 IPCS Mandatory Data Collection Public Notice* seeking comment on all aspects of the proposed instructions, reporting template, and certification form. See *2023 IPCS Mandatory Data Collection Public Notice*, WC Docket Nos. 23–62, 12–375, DA 23–355 (WCB/OEA April 28, 2023),

88 FR 27850 (May 3, 2023). After considering the comments and reply comments filed in response to the Public Notice and the 60-Day Notice, WCB and OEA released an *Order* on July 26, 2023, adopting the 2023 Mandatory Data Collection, and issuing the related instructions, reporting template, and certification form. See *2023 IPCS Mandatory Data Collection Order*, WC Docket Nos. 23–62, 12–375, DA 23–638 (WCB/OEA July 26, 2023). The *Order* largely implements the proposals set forth in the Public Notice, with refinements and reevaluations responsive to record comments. Under the *Order*, IPCS providers will be required to submit data using a reporting template to be filed through ECFS in accordance with the instructions adopted by WCB and OEA. The reporting template consists of a Word document (Appendix A to the instructions) for responses requiring narrative information, and Excel spreadsheets (Appendix B to instructions) for responses that require specific numbers and information. IPCS providers will also be required to submit an audited financial statement or report for 2022, and a signed certification of truthfulness, accuracy, and completeness.

Federal Communications Commission.

Lynne Engledow,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 2023–20518 Filed 9–20–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230914–0219]

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: Final rule.

SUMMARY: NMFS issues 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 final rule revises the sector annual catch limits (ACLs), commercial trip limits, recreational bag, vessel, and possession limits, and recreational accountability measures (AMs). For black grouper, this final rule revises the recreational bag, vessel, and possession limits. In addition, Amendment 53 establishes a rebuilding plan, and revises the overfishing levels, acceptable biological catch (ABC), annual optimum yield (OY), and sector allocations for gag. The purpose of this final 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: This final rule is effective October 23, 2023.

ADDRESSES: 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.

On June 12, 2023, NMFS published a notice of availability for Amendment 53 and requested public comment (88 FR 38011). On July 13, 2023, NMFS published a proposed rule for Amendment 53 and requested public

comment (88 FR 44764). NMFS approved Amendment 53 on September 7, 2023, pursuant to section 304(a)(3) of the Magnuson-Stevens Act. The proposed rule and Amendment 53 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 53 and implemented by this final rule is described below.

All weights described in this final 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. In response to SEDAR 10, management measures were modified in Amendment 16 to the FMP and its final rule, including a spawning season closure to end overfishing (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 ACLs and management measures were modified through Regulatory Amendment 22 to the FMP and its final rule (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 SEDAR 71 at their June 2021 meeting. The assessment used 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.

For the gag stock, the Council's 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 expected to be above 50 percent, as set forth in the Magnuson-Stevens Act National Standard 1 Guidelines (50 CFR 600.310(j)(3)(i)(A)). The Council accepted the SSC's recommended ABC values, as discussed below.

In Amendment 53, the Council is also revising the overfishing limit (OFL) for gag, and updating other biological reference points. Amendment 53 sets 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 will 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 Final Rule

This final rule revises the sector ACLs, commercial trip limits, recreational bag, vessel, and possession limits, and recreational AMs for gag. For black grouper, this final rule implements 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 revises the ABC based on SEDAR 71 and the recommendation

of the SSC, and sets the ABC, ACL, and annual OY equal to each other.

This final rule revises 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 revises 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 is adjusting 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 allocation method allows for the reductions in 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 for gag is currently operating. The Council chose the 5-year average of commercial and recreational MRIP FES landings from 2015 through 2019, and divided the reduction needed to achieve the new ACL in 2023 proportionally among the sectors. Then in each subsequent year throughout the rebuilding plan, the ACL poundage increase is allocated equally between both sectors and added to each sector's respective ACL from the previous year. These adjustments will 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 preferred sector allocation method chosen by the Council 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 impact on each sector is more equitable. Similarly, the Council noted that the new allocations will 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 and NMFS consider 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 the SSC's 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 revised commercial ACLs in this final rule are 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 revised recreational ACLs in this final rule are 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 final rule modifies the commercial trip limit

for gag to 300 lb (136 kg), without a trip limit reduction.

The revised commercial trip limit will increase the likelihood of gag remaining open to commercial harvest and available to consumers for as long as possible during the year while reducing harvest to end overfishing and ensuring rebuilding is achieved.

Recreational Vessel Limits for Gag and Black Grouper

This final rule establishes a private recreational vessel limit for gag and also a separate private recreational vessel limit for black grouper of two fish per vessel per day for each species, not to exceed the daily bag limit of one fish per person per day (no more than one of those fish may be a gag or a black grouper), whichever is more restrictive. For charter vessel and headboat (for-hire) recreational vessels, this final rule establishes a vessel limit for gag and also a separate 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 (no more than one of those fish may be a gag or a black grouper), whichever is more restrictive.

There is currently no recreational vessel limit for gag or black grouper. 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 final rule also implements recreational vessel limits for both gag and black grouper to help with harvest constraints for black grouper to indirectly benefit the gag portion of the snapper-grouper fishery. 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 will continue to allow recreational retention and help constrain harvest to the reduced recreational ACL.

This final rule does not alter the gag or black grouper recreational bag limits, which will remain one gag or one black grouper per person per day within the three fish aggregate for grouper and tilefish. This final rule establishes per day gag and black grouper recreational

vessel limits for the private angling component and per trip gag and black grouper vessel limits for the for-hire component. These separate vessel limits are 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 will 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 final rule sets 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 recreational ACL and total ACL are 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 final rule revises the recreational AMs for gag. The current in-season closure AM will be retained and the post-season recreational AM is 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 revised AM removes 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 revised measure, the AM trigger will not be tied to the total ACL, but only to the recreational ACL. The revised AM modification will 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 will apply to the recreational fishing season following the year of a recreational ACL overage. Additionally, under the revised recreational AM, the length of the recreational season will not be reduced if the Regional Administrator determines, using the best scientific information available, that such reduction is unnecessary. This final rule will not revise the commercial AMs because the Council determined that the current commercial AM remains sufficient to prevent commercial landings from exceeding either the current or revised commercial ACL.

Management Measures in Amendment 53 Not Codified by This Final Rule

In addition to the measures within this final rule, Amendment 53 revises the OFL for gag and updates other biological reference points. Amendment 53 also establishes a rebuilding plan, and revises the ABC, the annual OY, and the sector allocations for gag.

Rebuilding Plan for the South Atlantic Gag Stock

Amendment 53 establishes 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 will 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). SEDAR 71 used data from the MRIP FES, which 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).

Comments and Responses

NMFS received 10 comment submissions from individuals, commercial and recreational fishermen, and a state agency during the public comment period on the notice of availability and proposed rule for Amendment 53. NMFS acknowledges the comments in favor of the actions in the Amendment 53 and proposed rule and agrees with them. Six comment letters were in opposition to one or more actions within Amendment 53 or the proposed rule. Some comments were outside the scope of Amendment 53 and the proposed rule and are not responded to in this final rule, including one suggestion to transfer management of gag to the South Atlantic states. Comments that opposed the actions contained in Amendment 53 and the proposed rule are summarized below, along with NMFS' responses. No changes were made to this final rule as a result of public comment.

Comment 1: The commercial trip limit for gag should be reduced to 100

or 150 lb (45 or 68 kg) instead of 300 lb (136 kg), which would allow the commercial fishing season to stay open longer. This would reduce regulatory discards of gag when other snapper-grouper species such as greater amberjack are targeted.

Response: NMFS acknowledges the importance of gag to the seafood market and commercial fishermen's preference to maintain access to as many species as possible throughout the year. The majority of commercial trips from 2017 through 2019 that landed gag with at least 1 lb (0.5 kg) of gag landed less than the 300 lb (136 kg) trip limit being implemented through this final rule. As described in Amendment 53, 83 percent of commercial trips harvested from 1 to 250 lb (0.5 to 113 kg) of gag. Limiting the commercial harvest from the current limit of 1,000 lb (454 kg) to 300 lb (136 kg) per trip increases the likelihood of the gag portion of the fishery remaining open and available to consumers for a longer time period while reducing harvest to end overfishing and ensuring rebuilding is achieved. The Council considered a trip limit of 200 lb (91 kg), but did not select it because they determined it would make trips that target gag too costly and inefficient for commercial harvesters, and a trip limit lower than 300 lb (136 kg) would be expected to increase the potential for regulatory discards. NMFS expects the 300 lb (136 kg) trip limit to provide a better balance between season length and profitability than lower trip limits, while helping to end overfishing and rebuild the stock.

Comment 2: Recreational vessel limits should not be implemented for gag and black grouper. Private recreational fishing with two or fewer people is unaffordable due to the cost of fuel, bait, and ice. Each recreational angler should be able to keep their own bag limit. Also, it is not fair to implement a two fish per vessel limit for gag and black grouper on headboats that are capable of carrying up to 80 individuals.

Response: Approximately 75 percent of all recreational vessels that harvested gag harvested one gag or less per vessel trip from 2017 through 2019. 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 a vessel limit that would continue to allow recreational retention while helping constrain harvest to the reduced recreational ACL. In an effort to reduce the negative economic impact on the for-hire component of the recreational sector which may take multiple for-hire trips in a day, there is a separate per-trip vessel limit for the

for-hire component and a per-day vessel limit for private recreational vessels, to acknowledge that most private recreational vessels take a single trip in a day.

NMFS acknowledges the potential issues with implementing vessel limits on headboats. However, approximately 80 percent of headboats harvested two gag per vessel trip or less from 2017 through 2019. These data suggest a vessel limit would not have a large impact on reducing recreational harvest of gag, but would help, in combination with other measures, to constrain recreational harvest to the reduced catch levels.

Due to concerns over the misidentification of gag and black grouper among recreational anglers, the final rule will also modify black grouper management to maintain consistency in the recreational management measures between the two species in order to end overfishing of gag and rebuild the stock. As described in Amendment 53, gag and black grouper are similar in appearance, have a similar life history and may co-occur with each other, which can create confusion when trying to identify whether a fish is either a gag or black grouper. Misidentified gag and black grouper by recreational fishermen is prevalent in some areas of the South Atlantic. Currently, the recreational management measures (size and bag limits) for gag and black grouper are the same. Altering recreational management measures for gag and not for black grouper creates more opportunity for additional gag to be harvested through misidentification and confusion among the public. NMFS determined that these recreational harvest restrictions on black grouper are necessary to ensure the rebuilding of gag is successful.

Comment 3: A more restrictive closed season or slot size limits for gag and black grouper should be utilized for the recreational sector instead of vessel limits.

Response: In developing Amendment 53, the Council considered changes to the gag and black grouper spawning season closure for both sectors. Both gag and black grouper are currently included as part of a seasonal closure for both sectors for South Atlantic shallow-water grouper during January through April each year. However, input received from the public during scoping and from the Council's Snapper-Grouper Advisory Panel noted that the month of May was a very important month to keep open for both the commercial and recreational sectors. The Council determined that the current spawning season closure of January through April for gag and black grouper

encompasses peak spawning and that additional closed months in May or December would not provide enough biological benefit to outweigh the loss of access to the fishery for both sectors, and NMFS agrees.

Changes to the minimum size limit and the potential for establishing a slot limit for gag were also considered. The current size limit for gag is 24 inches (61.0 cm), total length, for both sectors. Size limit management changes were discussed by the Council in development of Amendment 53 because of concerns of a scarcity of large, mature, male gag being available for harvest. Gag are long-lived species that change sex from female to male over their lifetime. The Council discussed the possible benefits of increasing the minimum size limit or creating a slot limit but there were other concerns about increased discards with both size limit options. Further, larger gag are caught in deep water and experience high release mortality. Ultimately, the Council decided that increased recreational discards would be detrimental to the stock and that the current minimum size limit is sufficient to allow gag a chance to spawn before being prosecuted by the fishery.

Additional management measures for black grouper, other than vessel limits, are not necessary in Amendment 53 as a result of the latest stock assessment for gag.

Comment 4: The recreational sector generates more revenue, economic activity, and net economic benefits than the commercial sector. Allocations for gag should not result in a 50/50 split among the sectors.

Response: NMFS disagrees. As stated in Amendment 53, there are a minimal number of charter trips taken in the South Atlantic that target gag, and the revenue from those trips cannot be solely attributed to a single species. In terms of economic activity, even when accounting for all recreational modes (excluding headboats that participate in the Southeast Region Headboat Survey for which angler-level data are not collected) and attributing the entirety of expenditures on trips that target gag specifically to gag, the total sales impacts are historically far less than those estimated for the commercial sector. NMFS acknowledges that when compared to the status quo, the selected allocation percentages in Amendment 53 result in the lowest total estimated net economic benefits of the allocation alternatives considered. 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. Amendment 53

adjusts the allocation percentages to result in 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. However, while acknowledging the importance of economic benefits in the utilization of the gag resource, the Council determined that economic efficiency was not the sole objective in determining an allocation. In reviewing the allocation options, the Council evaluated the need to reduce the overall gag harvest by approximately 70 percent, when compared to the total average landings from 2015 through 2019, while equitably balancing the initial harvest reductions and the later harvest increases between the commercial and recreational sectors. The Council determined, and NMFS agrees, that the preferred allocation method 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 the effect on each sector is more equitable. Similarly, the Council noted that the preferred allocations would strike a balance between the needs of both sectors and would increase each sector's allowable catch proportionately on a poundage basis throughout the rebuilding plan. The Council determined that this alternative allocates both overfishing restrictions and recovery benefits fairly and equitably among all sectors that target gag. Thus, NMFS agrees that this allocation method is fair and equitable to fishery participants in both the commercial and recreational sectors and would be carried out in such a manner that no particular individual, corporation, or other entity would acquire excessive shares. 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.

Comment 5: The proposed vessel limit language for gag and black grouper in the codified text is confusing and should be clarified. The recreational vessel limits for gag and black grouper should be linked to allow only two of either gag or black grouper per trip.

Response: NMFS disagrees with the comment. The vessel limits for gag and black grouper in Amendment 53, and in the draft proposed regulations that the Council reviewed and deemed to be

necessary and appropriate to implement Amendment 53, are addressed as a separate vessel limit for gag and a separate vessel limit for black grouper, without any mention of a combined species vessel limit among the two species. Similarly, the proposed rule and this final rule also specifically describe separate vessel limits for both gag and black grouper that are not linked. After a review of all relevant information, NMFS has determined that the recreational vessel limits approved by the Council are two gag and two black grouper, unless subsequently changed in the future.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 53, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS has determined the FRFA is consistent with the RFA, and a summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

Public comments relating to social and economic implications and potential impacts on small businesses are addressed in the responses to *Comments 1, 2, and 4* in the *Comments and Responses* section of this final rule. No changes to this final rule were made in response to these public comments. No comments were received from the Office of Advocacy for the Small Business Administration.

This final rule will: (1) revise the gag total ACL and sector ACLs, (2) reduce the gag commercial trip limit, (3) revise the gag recreational bag and possession limits, and establish recreational vessel limits, (4) revise the gag recreational AMs, and (5) for black grouper revise the recreational bag and possession limits and establish recreational vessel

limits. Item (1), the gag total ACL and sector ACLs, will 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 gag commercial trip limit, will 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, will only apply to for-hire vessels and recreational anglers. None of these changes will directly apply to federally-permitted dealers. Any change in the supply of gag available for purchase by dealers as a result of this final rule, and associated economic effects, would be an indirect effect of this regulatory action and would therefore fall outside the scope of the impacts considered under the Regulatory Flexibility Act (RFA).

Although most provisions of this final rule will apply to for-hire vessels, they are not expected to have any direct effects on these entities. For-hire vessels sell fishing services to recreational anglers. The changes to the gag catch limits and gag and black grouper management measures are not 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 final rule would be a consequence of a change in anglers' behavior, secondary to any direct effect on anglers and, therefore, an indirect effect of this final 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 final 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. However, under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)–(5), and because recreational anglers are not businesses, organizations, or governmental jurisdictions, impacts on recreational anglers are outside the scope of this analysis (5 U.S.C. 603). 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 final rule are believed to be small entities based on the NMFS size standard. No other small entities that are directly affected by this final rule have been identified.

This final rule will 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 new catch limits reflect a shift in recreational reporting units from the MRIP CHTS to the MRIP FES. The total ACL will 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 value will remain in effect unless it is changed in the future. Relative to the current commercial ACL of 347,301 lb (157,533 kg) and applying the current commercial sector allocation of 51 percent, the 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 final rule will 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—REVISED TOTAL ACLS AND COMMERCIAL ACLS, AS BASED ON CURRENT ALLOCATION PERCENTAGES

Year	Revised total ACL in lb (kg)	Revised commercial ACL in lb (kg)	Difference between revised 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 final rule will 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 will be split equally between both sectors and added to each sector's ACL from the previous year. As a result, the allocation percentages will gradually shift over time. The 2032 values will remain in effect unless changed by future management action. As shown in Table 2, the combined economic effects of the changes to the total ACLs in conjunction with the 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 ranges 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 are 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 is – \$490,415. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel are – \$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—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 final rule will 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 will 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 are initially subsumed under those described for the changes to the 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 because it would be inconsistent with the SSC's 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 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 those set by this final rule, along with the expected change in ex-vessel revenue, are provided in Table 3. Relative to the total ACLs set by this final rule 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 this final rule 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 commercial ACLs set by this final rule, using a 3 percent discount rate, is –\$777,295 (2021 dollars) and the annualized NPV during that period is –\$91,123. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are –\$449 and –\$4, respectively. The second alternative was not selected because the Council determined that 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 management measures and those implemented by this final rule, 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 ACTION TO REVISE THE ABC, ACL, AND ANNUAL OY

Year	Total ACL set by this final rule 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
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 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 those set by this final rule, along with the expected change in ex-vessel revenue, are provided in Table 4. Relative to the total ACLs set by this final rule 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 this final rule 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 commercial ACLs set by this final rule, using a 3 percent discount rate, is –\$1.6 million (2021 dollars) and the annualized NPV during

that period is –\$182,245. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are –\$898 and –\$9, respectively. The third alternative was not selected because the Council determined that 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 management measures and those implemented by this final rule, are expected to 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 ACTION TO REVISE THE ABC, ACL, AND ANNUAL OY

Year	Total ACL set by this final rule 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 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 allocation set by this final rule, the first alternative, when applied to the 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 allocation set by this final rule, using a 3 percent discount rate, is \$443,067 (2021 dollars) and the annualized NPV during that period is \$51,941. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel

(assuming 203 affected vessels) are \$256 and \$3, respectively. The first alternative was not selected because the Council determined the allocation set by this final rule was based on an allocation method that incorporated more recent landings and was therefore a better representation of the gag portion of the snapper-grouper fishery moving forward. This allocation method 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 ALLOCATION SET BY THIS FINAL RULE

Year	Commercial allocation set by this final rule	Alternative 1 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 allocation alternative 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 allocation set by this final rule, the second alternative, when applied to the revised 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 allocation set by this final rule, using a 3 percent discount rate, is –\$4.02 million (2021 dollars) and the annualized NPV during that period is –\$470,854. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are –\$2,319 and –\$23, respectively. The second alternative was not selected

because the Council determined the allocation set by this final rule, as well as other alternatives that were considered, were based on 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 ALLOCATION SET BY THIS FINAL RULE

Year	Commercial allocation set by this final rule	Alternative 2 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 allocation alternative 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 allocation set by this final rule, the third alternative, when applied to the revised 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 allocation set by this final rule, using a 3 percent discount rate, is – \$1.98 million (2021 dollars) and the annualized NPV during that period is – \$231,791. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel

(assuming 203 affected vessels) are – \$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 ALLOCATION SET BY THIS FINAL RULE

Year	Commercial allocation set by this final rule	Alternative 3 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 allocation alternative 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 allocation set by this final rule, the fourth alternative, when applied to the revised 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 allocation set by this final rule, using a 3 percent discount rate, is – \$946,558 (2021

dollars) and the annualized NPV during that period is – \$110,965. The average annualized NPV of changes in ex-vessel revenue and economic profits per vessel (assuming 203 affected vessels) are – \$547 and – \$5, respectively. The fourth alternative was not selected because the Council decided that 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 ALLOCATION SET BY THIS FINAL RULE

Year	Commercial allocation set by this final rule	Alternative 4 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 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 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 revised 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 commercial trip limit set by this final rule, the second 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 revised 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 because a 200 lb (91 kg) trip limit would make trips to catch gag too costly and inefficient.

The third alternative to the 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 commercial trip limit set by this final rule, 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 revised 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 because it would not constrain harvest to ensure the longest

commercial season possible under the revised catch levels.

The fourth alternative to the 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 commercial trip limit set by this final rule, 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 revised 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 because it would not constrain harvest to ensure the longest commercial season possible under the revised catch levels.

The fifth and final alternative to the 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 commercial trip limit set by this

final rule 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 trip limit set by this final rule and in 2027, and subsequent years it would be 700 lb (318 kg) greater. These incremental increases may allow for greater utilization of the revised 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 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 progress are provided.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule and will designate such publications as “small entity compliance guides.” The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a fishery bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.*, bulletin) will be available on the website (see **ADDRESSES**). Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES**).

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 final rule. This final 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: September 15, 2023.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 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 this paragraph (b)(2)(i), 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 this paragraph (b)(2)(i), 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 this paragraph (b)(2)(i), 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 this paragraph (b)(2)(i), 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. 2023–20324 Filed 9–20–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 182

Thursday, September 21, 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

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

[Docket No. PHMSA–2019–0031 (HM–265A)]

RIN 2137–AF47

Hazardous Materials: Modernizing Regulations To Improve Safety and Efficiency; Extension of Comment Period

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: On July 5, 2023, PHMSA published an advance notice of proposed rulemaking, titled “Hazardous Materials: Modernizing Regulations to Improve Safety and Efficiency (HM–265A),” seeking comment of 46 topics related to modernizing the hazardous materials regulations to increase efficiency while maintaining and improving safety. In response to a request for an extension of the comment period submitted by the American Short Line and Regional Railroad Association, PHMSA is extending the comment period for the HM–265A notice for an additional 60 days. Comments to the HM–265A notice will now be due by December 4, 2023.

DATES: The comment period for the proposed rule published July 5, 2023, at 88 FR 43016, is extended. Comments should be received on or before December 4, 2023. To the extent possible, PHMSA will consider late-filed comments.

ADDRESSES: Comments should reference Docket No. PHMSA–2019–0031 (HM–265A) and may be submitted in the following ways:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 1–202–493–2251.

- **Mail:** Dockets Management System, U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

- **Hand Delivery:** To the Docket Management System: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: All submissions must include the Agency name and Docket Number (PHMSA–2019–0031) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Docket: For access to the dockets to read associated documents or comments received, go to <https://www.regulations.gov> or DOT’s Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its process. DOT posts these comments without change, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.dot.gov/privacy>.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and 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 ANPRM contain commercial or financial information that is customarily treated as private, that you treat as private, and that is relevant or responsive to this ANPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN” for “proprietary information.” Submissions

containing CBI should be sent to Eamonn Patrick, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT:

Eamonn Patrick, Standards and Rulemaking Division, 202–366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On July 5, 2023, PHMSA published the HM–265A advance notice of proposed rulemaking (ANPRM)¹ which seeks comment on 46 topics related to modernizing the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180) to increase efficiency while maintaining or improving the safety of hazardous materials transportation.

II. Comment Period Extension

PHMSA initially provided a 90-day comment period for the HM–265A ANPRM, which closes on October 3, 2023. In response to a request to extend the comment period from the American Short Line and Regional Railroad Association (ASLRRA),² PHMSA is extending the comment period for an additional 60 days. ASLRRA requested the extension to allow for additional time to gather feedback on the numerous topics addressed in the ANPRM from its member railroads, the majority of which are small businesses. The comment period will now close on December 4, 2023. This extension provides the public with an additional 60 days and should provide adequate opportunity for the public and stakeholders to submit comments; however, PHMSA may, at its discretion, extend the comment period further if necessary. To the extent possible, PHMSA will also consider late-filed comments.

¹ 88 FR 43016.

² ASLRRA’s comment may be reviewed at: <https://www.regulations.gov/comment/PHMSA-2019-0031-0011>.

Issued in Washington, DC, on September 15, 2023, under authority delegated in 49 CFR part 1.97.

William S. Schoonover,

Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2023–20440 Filed 9–20–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2022–0097]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Eddie L. Fray on behalf of the Parent Advocacy Group on November 27, 2015. The petitioner requested that the Secretary of Transportation mandate installation of specific products and systems as well other complementary safety features intended to prevent pediatric heatstroke in vehicles. NHTSA is denying the petition because the Agency does not initiate rulemaking to require installation of specific products.

DATES: September 21, 2023.

ADDRESSES: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Riddoch, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Telephone: (202) 366–2367, or Mr. Eli Wachtel, Telephone: 202–366–3065, Office of Chief Counsel. Address: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

I. Background

The National Traffic and Motor Vehicle Safety Act (“Safety Act”) (49 U.S.C. 30101 *et seq.*) authorizes NHTSA to issue safety standards for new motor vehicles and new items of motor vehicle equipment. Each Federal Motor Vehicle Safety Standard (FMVSS) must be practicable, meet the need for motor vehicle safety, and be stated in objective

terms. NHTSA does not endorse any vehicles or items of equipment. Further, NHTSA does not approve or certify vehicles or equipment. Instead, the Safety Act establishes a “self-certification” framework under which each manufacturer is responsible for certifying that its products meet all applicable safety standards.

Petitions for rulemaking are governed by 49 CFR 552. Pursuant to Part 552, the agency conducts a technical review of the petition, which may consist of an analysis of the material submitted, together with information already in possession of the agency. In deciding whether to grant or deny a petition, the agency considers this technical review as well as appropriate factors, which include, among others, allocation of agency resources and agency priorities.

II. Petition

On November 27, 2015, Mr. Fray submitted a petition on behalf of the Parent Advocacy Group¹ asking that the Secretary of Transportation mandate lifesaving features and systems intended to reduce heatstroke deaths of children in vehicles.² The petitioner states that the mandate is necessary to save lives and requests that the Secretary issue the mandate within 30 days.³ A copy of the petition is available in the docket identified at the beginning of this document.

In support of his request, the petitioner cites heatstroke death statistics dating back to 1998 as well as information about specific heatstroke deaths of children in vehicles. The petitioner also includes information about actions NHTSA has taken regarding child heatstroke deaths in vehicles and why he believes those actions fall short of what is needed.⁴ The petition then describes a product called “the Guardian Cam,” a heatstroke prevention alarm system called “Accessory,” and a seat belt and pressure sensing alert system called “seat to seat.”⁵ In addition to descriptions of the concepts, the petitioner included exemplar sketches of what the concepts would look like

¹ The petition states that the Parent Advocacy Group is a group of members dedicated to ending heatstroke deaths of children in vehicles.

² Fray, Eddie L., Petition to the Secretary of Transportation to Mandate a Number of Higher Safety Standards to the Automobile Industry (“Fray Petition”), November 27, 2015, page 1.

³ *Id.*

⁴ Fray Petition at page 9.

⁵ Fray Petition, pages 9–12. The petitioner has filed copyrights for some of these concepts with the U.S. Copyright Office in 2014 and 2015. (Guardian Car Cam: TXu001931485; Accessory: TXu001999496; S2S Hot Car System: TXu001982523).

when installed in a vehicle. The petitioner also outlined how the concepts are designed to work in various scenarios to prevent child heatstroke in vehicles.

It is our understanding that the petitioner is requesting that the Secretary of Transportation mandate the installation of Guardian Cam and other complementary systems and features on new motor vehicles. The Secretary of Transportation has delegated responsibility for responding to this petition to NHTSA.

III. NHTSA’s Consideration of the Petition and Decision

NHTSA has conducted an analysis of Mr. Fray’s petition and, after careful consideration, has decided to deny his petition and will not initiate rulemaking proposing to require his concept countermeasures. NHTSA is denying Mr. Fray’s petition because it requests that NHTSA mandate specific products and accompanying features. Under the Safety Act, NHTSA is tasked with issuing motor vehicle safety standards that set minimum standards for motor vehicle or motor vehicle equipment performance. In doing so, NHTSA aims to establish standards that are performance-based and technology neutral. Additionally, as stated above, NHTSA does not endorse individual products. Accordingly, NHTSA finds that it would be inappropriate to grant a petition to initiate rulemaking to require specific products. Mr. Fray also asks the Secretary of Transportation to “develop, demonstrate, and evaluate” his proposed countermeasures. This request, however, does not fall within the scope of a petition for rulemaking under 49 CFR part 552.⁶

Although NHTSA is denying the petition, the agency shares Mr. Fray’s concerns about the risk of pediatric heatstroke in vehicles and is committed to taking appropriate steps to address this issue. To this end, NHTSA continues to issue public messaging campaigns with numerous safety partners and conduct research. Additionally, NHTSA has recently initiated a rulemaking to establish new requirements to address pediatric heatstroke in vehicles.⁷

⁶ Mr. Fray’s petition did not request that NHTSA initiate rulemaking to require vehicles to be able to detect and respond to the presence of unattended children in seats, nor did it provide supporting information demonstrating the practicability and safety benefits of such a requirement. Such a request would have fallen within the scope of a petition for rulemaking under 49 CFR part 552.

⁷ The RIN for this planned rulemaking is 2127–AM49. For more information see <https://www.reginfo.gov/public/do/>

Section 24222 of the Infrastructure, Investment and Jobs Act (commonly referred to as the Bipartisan Infrastructure Law or BIL) directs the Secretary of Transportation to issue a final rule requiring that passenger motor vehicles be equipped with a system to alert the operator to check rear-designated seating positions after the vehicle engine or motor is deactivated by the operator that shall include a distinct auditory and visual alert that may be combined with a haptic alert.⁸ The BIL further directs the Agency to conduct studies on the potential retrofitting of existing passenger motor

vehicles with rear-seat alert systems, as well as the potential benefits and economic burdens associated with those technologies. These technologies are intended to reduce the risk of children being left in rear-designated seating positions when the vehicle motor is deactivated.

NHTSA is also conducting research regarding the practicability of issuing performance standards that would require detection of unattended occupants in rear seats. Such requirements would provide safety benefits beyond the mandated minimum.

IV. Conclusion

NHTSA has reviewed the petition for rulemaking submitted by Mr. Eddie L.

Fray requesting that the Secretary of Transportation mandate installation of specific products intended to prevent the pediatric heatstroke in vehicles. NHTSA is denying the request because the agency does not initiate rulemakings to mandate specific products.

In accordance with 49 U.S.C. 30162 and 49 CFR part 552, the petition for rulemaking from Mr. Eddie Fray is denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegations of authority at 49 CFR 1.95 and 501.8.

Issued in Washington, DC.

Milton E. Cooper,

Director of Rulemaking Operations.

[FR Doc. 2023–20393 Filed 9–20–23; 8:45 am]

BILLING CODE 4910–59–P

eAgendaViewRule?pubId=202304&RIN=2127-AM49.

⁸ Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 § 24222 (2021).

Notices

Federal Register

Vol. 88, No. 182

Thursday, September 21, 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

Forest Service

Proposed New Recreation Fee Site

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Chugach National Forest is proposing to establish a new recreation fee site. Recreation fee revenues collected at the new recreation fee site would be used for operation, maintenance, and improvement of the site. An analysis of nearby recreation fee sites with similar amenities shows the new recreation fee that would be charged at the new recreation fee site is reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Chugach National Forest, 161 East 1st Avenue, Door 8, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Tyler Glenn, Recreation Program Manager, 907-743-9508, or tyler.glenn@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) directs the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** of establishment of new recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed new recreation fee for public notice and comment in local newspapers and other local publications. Most of the new recreation fee revenues would be spent where they are collected to enhance the visitor experience at the new recreation fee site.

An expanded amenity recreation fee of \$75 per night would be charged for

rental of the Trail River Cabin. The recreation fee revenues would support operation and maintenance of the cabin. Reservations for rental of the cabin could be made online at www.recreation.gov or by calling 877-444-6777. Reservations would cost \$8.00 per reservation.

Dated: September 15, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023-20414 Filed 9-20-23; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Shoshone National Forest is proposing to establish multiple new recreation fee sites. Recreation fee revenues collected at the new recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the recreation fees that would be charged at the new recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414.

FOR FURTHER INFORMATION CONTACT: Paul Rau, Outdoor Recreation Planner, 307-250-9317, or paul.rau@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) directs the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** of establishment of new recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed new recreation fees for public notice and comment in local newspapers and other local publications. Most of the new recreation fee revenues would be spent where they

are collected to enhance the visitor experience at the new recreation fee sites.

An expanded amenity recreation fee of \$5 per site per night would be charged at the Aspen Glade, Brown Mountain, Deer Creek, Frye Lake, Hugh Otte, Jack Creek, Lily Lake, Little Popo Agie, Little Sunlight, Warm Springs, and Wood River Campgrounds. An expanded amenity recreation fee of \$10 per night would be charged at the Wild Iris Campground. The recreation fee revenues would enhance recreation opportunities, improve customer service, and address maintenance needs. Reservations for the campgrounds could be made online at www.recreation.gov or by calling 877-444-6777. Reservations would cost \$8.00 per reservation.

Dated: September 15, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023-20415 Filed 9-20-23; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Locatable Minerals

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service (Forest Service or Agency) is seeking comments from all interested individuals and entities on reapproval of a currently approved information collection request for locatable minerals.

DATES: Comments must be received in writing by November 20, 2023.

ADDRESSES: Comments concerning this notice should be addressed to the Lands, Minerals, and Geology Management Staff, USDA Forest Service, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401-3305. All timely comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at the location listed in **ADDRESSES** during normal business hours. Visitors are

encouraged to call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Kevin Knesek, Acting Deputy Director, Lands, Minerals, and Geology Management, (208) 215-1522, kevin.s.knesek@usda.gov. Individuals who use telecommunication devices for deaf and hard of hearing (TDD) may call the Federal Relay Service at 800-877-8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Locatable Minerals.

OMB Number: 0596-0022.

Expiration Date of Approval: June 30, 2018.

Type of Request: Reapproval of an information collection request.

Abstract: This information collection request is necessary to ensure that potential adverse environmental impacts associated with locatable mineral operations on National Forest System (NFS) lands are minimized to the extent practicable. Forest Service regulations at 36 CFR 228.5 require mining operators, with some exceptions, to notify the authorized Forest Service officer of their intent to conduct a locatable mineral operation on NFS lands by filing a proposed plan of operations. All information identified in 36 CFR part 228 must be included in the proposed plan of operations. Forest Service form FS-2800-5, Plan of Operations for Mining Activities on National Forest System Lands, is available for use by mining proponents and operators to simplify this process. The information required by 36 CFR 228.4(c), (d), and (e) in a proposed plan of operations includes:

1. The name and legal mailing address of operators (and claimants if they are not the same) and their lessees, assigns, or designees.

2. A map or sketch showing information sufficient to locate:

a. The proposed area of operations on the ground.

b. Existing and/or proposed roads or access routes to be used in connection with the operation as set forth in 36 CFR 228.12 on access.

c. The approximate location and size of areas where surface resources will be disturbed.

3. Information sufficient to describe:

a. The type of operations proposed and how they would be conducted.

b. The type and standard of existing and proposed roads or access routes.

c. The means of transportation used or to be used as set forth in 36 CFR 228.12.

d. The period during which the proposed activity will take place.

e. Measures to be taken to meet the requirements for environmental protection in 36 CFR 228.8.

This information collection request is crucial to protecting surface resources, including plants, animals, and their habitat, and addressing public safety on NFS lands. The authorized Forest Service officer will use the collected information to ensure that prospecting for and exploration, development, and production of mineral resources are conducted in an environmentally sensitive manner; that these mineral operations are integrated into planning and management of other resources using principles of ecosystem management; and that lands disturbed by mineral operations are reclaimed using the best scientific knowledge and returned to other productive uses. If this information were not collected, the Forest Service would not be able to comply with its regulations, and locatable mineral operations could result in undue damage to surface resources in the NFS.

Estimated Annual Burden per Respondent: 224 hours.

Type of Respondents: Mining proponents and operators.

Estimated Annual Number of Respondents: 198.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 44,352 hours.

Comment Is Invited

Comment is invited on (1) whether this information collection request is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information collected will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the information collection request, 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 information collection request on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: September 15, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023-20484 Filed 9-20-23; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Stakeholder Listening Session Regarding Administration of the Veterinary Medicine Loan Repayment Program and Veterinary Services Grant Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of Stakeholder Listening Session.

SUMMARY: USDA National Institute of Food and Agriculture (NIFA) announces its stakeholder listening initiative, "NIFA Listens Regarding Administration of the Veterinary Medicine Loan Repayment Program (VMLRP) and the Veterinary Services Grant Program (VSGP)." The objectives of the programs are to help veterinarians offset educational debt in return for food animal veterinary services, to ensure food animal veterinary services are available in priority shortage situation areas, and to support training of veterinary students, interns, and residents. As part of the stakeholder input process, NIFA is conducting a public meeting to solicit comments regarding the administration of the programs and the processes developed and implemented since the conclusion of the first application and award cycle (September 2010 for the VMLRP and September 2016 for the VSGP). Input collected will be used to evaluate and improve processes for shortage situation nominations, shortage area designations and allocations, full-time equivalent requirements, notice of funding opportunities, application processing, processes for matching shortage areas with applicants, and award requirements.

DATES:

Online Input: Submission of online stakeholder input will be open upon publishing of this Notice through 5 p.m. EST February 7, 2024. To submit online, email vmrlp@usda.gov and include your name, organization, contact information, and your input in plain text in the body of the email.

Virtual Listening Session: The virtual listening session will be held on January 24, 2024 beginning at 11 a.m. EST and

is scheduled to end no later than 3 p.m. EST. The session will include a presentation of the goals and background information of the Veterinary Medicine Loan Repayment Program (VMLRP) and Veterinary Services Grant Program (VSGP), followed by comments from stakeholders. Each speaker who wishes to comment will virtually raise their hand and be placed into a queue in the order in which their hand was raised. When selected to speak, each speaker will be allowed 10 minutes to provide verbal comments.

If you need a reasonable accommodation to register for or participate in this event, please contact Alan Robinson, Acting Director of Equal Opportunity Staff, at Alan.Robinson@usda.gov, or 202-573-1514 no later than January 10, 2024.

FOR FURTHER INFORMATION CONTACT: Marline Azevedo, VMLRP Program Coordinator, Marline.Azevedo@usda.gov, 816-401-7790.

SUPPLEMENTARY INFORMATION: This listening effort will allow stakeholders to provide feedback on the following questions:

- What is your top priority for the VMLRP and/or VSGP in the next decade?
- What are the greatest challenges that you see facing food animal veterinary practice, with respect to the VMLRP and VSGP, in the coming decade?
- What improvements or enhancements would you make to VMLRP and VSGP?
- What are the most promising opportunities/solutions for food animal veterinary practice, with respect to the VMLRP and VSGP, in the coming decade?

NIFA welcomes stakeholder input from any group or individual interested in food animal veterinary services in the U.S., including but not limited to governmental agencies, academic institutions, State Animal Health Officials, applicants, current or former awardees, current or former food animal veterinary practitioners, producers, and any other interested parties.

NIFA is eager to obtain stakeholder comments on the current challenges and needed breakthroughs as well as the priorities, solutions, and opportunities that will facilitate long-term sustainable services in food animal veterinary medicine.

Implementation Plans: All input will become a part of the official record and available on the NIFA website, <https://www.nifa.usda.gov/>. Stakeholder input received from the two mechanisms is

treated equally. The challenges, needed breakthroughs, and priorities identified by this effort will be evaluated in conjunction with input from NIFA staff. This information will be critical for NIFA's evaluation and improvements of existing VMLRP and VSGP operations.

Done at Washington, DC.

Drenda Williams,

Associate Director for Operations, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2023-20463 Filed 9-20-23; 8:45 am]

BILLING CODE 3410-22-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-856]

Corrosion-Resistant Steel Products From Taiwan: Notice of Third Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Partial Exclusion From Antidumping Duty Order; Correction

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

ACTION: Notice; Correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** of August 25, 2023, in which it issued the third amended final determination of sales at less than fair value (LTFV) concerning certain corrosion resistant steel products (CORE) from Taiwan. This notice inadvertently listed the incorrect applicable date of July 3, 2023; the correct applicable date is August 25, 2023, the date of publication of the third amended final notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5848.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 25, 2023, in FR Doc number 2023-18386, on page 58246, in the first column, correct the **DATES** caption to read: Applicable August 25, 2023.

Background

On June 23, 2023, the U.S. Court of International Trade (CIT) sustained Commerce's second remand redetermination concerning the LTFV

investigation of CORE from Taiwan. Accordingly, Commerce issued a third amended final determination for the LTFV investigation of CORE from Taiwan.¹ In the third amended final **Federal Register** notice, Commerce inadvertently listed July 3, 2023 as the applicable date of the notice. However, with the issuance of this notice of correction, we confirm that the correct applicable date of the third amended final determination is August 25, 2023 (the initial date of publication of the third amended final determination notice in the **Federal Register**).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e) and 735(d) of the Tariff Act of 1930, as amended.

Dated: September 15, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023-20482 Filed 9-20-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-857]

Certain Freight Rail Couplers and Parts Thereof From Mexico: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain freight rail couplers and parts thereof (freight rail couplers) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2021, through June 30, 2022.

DATES: Applicable September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1468.

¹ See *Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order*, 88 FR 58245 (August 25, 2023).

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2023, Commerce published in the **Federal Register** its *Preliminary Determination* of the LTFV investigation of freight rail couplers from Mexico, in which it also postponed the final determination until September 15, 2023.¹ Commerce invited interested parties to comment on the *Preliminary Determination*.²

For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.³ The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are freight rail couplers from Mexico. For a full description of the scope of this investigation, see appendix I.

Scope Comments

During the course of this investigation and the concurrent LTFV and countervailing duty investigations of freight rail couplers from the People’s Republic of China, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in scope-specific case and rebuttal briefs.⁴ We received comments from interested parties on the Preliminary Scope Memorandum, which we address in the

Final Scope Memorandum.⁵ We did not make any changes to the scope of the investigation from the scope published in the *Preliminary Determination*, as noted in appendix I.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in June and July 2023, we conducted verification of the sales and cost information submitted by ASF–K de Mexico S. de R.L. de C.V. (ASF–K) and Amsted Rail Company, Inc. (Amsted Rail) for use in our final determination. We used standard verification procedures, including an examination of relevant sales and accounting records, and original source documents provided by ASF–K and Amsted Rail.⁶

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as appendix II.

Changes Since the Preliminary Determination

We have made certain changes to the margin calculations for ASF–K since the *Preliminary Determination*. See the Issues and Decision Memorandum for a discussion of these changes.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

In this case, Commerce calculated an individual estimated weighted-average dumping margin for ASF–K that is not zero, *de minimis*, or determined entirely under section 776 of the Act. Consequently, the rate calculated for ASF–K is also assigned as the rate for all other producers and exporters.

Final Negative Determination of Critical Circumstances

In accordance with section 735(a)(3) of the Act and 19 CFR 351.206(h), Commerce finds that critical circumstances do not exist for ASF–K. For a full description of the methodology and results of Commerce’s critical circumstances analysis, see the “Final Negative Determination of Critical Circumstances” section of the Issues and Decision Memorandum.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the POI:

Producer/exporter	Estimated weighted-average dumping margin (percent)
ASF–K de Mexico S. de R.L. de C.V.	48.10
All Others	48.10

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of the date of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of freight rail couplers from Mexico, as described in appendix I to this notice, which were entered, or withdrawn from warehouse for consumption on or after May 3, 2023, the date of publication of *Preliminary Determination* of this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-

¹ See *Certain Freight Rail Couplers and Parts Thereof from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 88 FR 27864 (May 3, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² *Id.*
³ See Memorandum, “Issues and Decision Memorandum for the Final Affirmative Determination in the Less Than Fair Value Investigation of Certain Freight Rail couplers from Mexico,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁴ See Memorandum, “Preliminary Scope Decision Memorandum,” dated March 28, 2023.

⁵ See Memorandum, “Final Scope Decision Memorandum,” dated May 15, 2023.
⁶ See Memoranda, “Verification of the Sales Responses of ASF–K de Mexico S. de R.L. de C.V. in the Antidumping Duty Investigation of Certain Freight Rail Couplers and Parts Thereof from Mexico,” dated July 12, 2023; and “Verification of the Cost Response of Amsted Rail Company, Inc. & ASF–K de Mexico S. de R.L. de C.V. in the Antidumping Duty Investigation of Certain Freight Rail Couplers from Mexico,” dated August 5, 2023.

average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of freight rail couplers from Mexico no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section.

Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: September 15, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers certain freight railcar couplers (also known as "fits" or "assemblies") and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (e.g., coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigation include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.*, knuckles and coupler bodies) are included within the scope of the investigation when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of this investigation meet or exceed the AAR specifications of M-211, "Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts" and/or AAR M-215 "Coupling Systems," or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

The couplers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.50. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Final Negative Determination of Critical Circumstances
- V. Changes Since the Post-Preliminary Determination
- VI. Discussion of the Issues
 - Comment 1: Whether ASF-K Has a Viable Mexican Home Market
 - Comment 2: Whether ASF-K's IMMEX Sales Are U.S. Sales
 - Comment 3: Whether Commerce Should Disqualify Counsel to Petitioner and Dismiss the Petition Due to a Conflict of Interest
 - Comment 4: Whether Commerce Should Revoke the Initiation of an MNC Provision Investigation
 - Comment 5: Whether Commerce Should Disallow ASF-K's Reported Surcharges
 - Comment 6: Whether ASF-K's Technical Support Expenses Are Indirect Selling Expenses
 - Comment 7: Whether ASF-K's Technical Support Expenses Should Be Allocated to the U.S. Market
 - Comment 8: Whether To Incorporate Information From Verifications Into the Final Calculations
- VII. Recommendation

[FR Doc. 2023-20483 Filed 9-20-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Raw Honey From the Socialist Republic of Vietnam: Addendum to Initiation of Antidumping Duty Administrative Review

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

SUMMARY: The U.S. Department of Commerce (Commerce) has received requests to conduct an administrative review of the antidumping duty (AD)

order on raw honey from the Socialist Republic of Vietnam (Vietnam). As explained below, in accordance with Commerce's regulations, we are initiating this administrative review with respect to certain companies.

DATES: Applicable September 21, 2023.

FOR FURTHER INFORMATION CONTACT:

Stephen Bailey, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-0193.

SUPPLEMENTARY INFORMATION:

Background

In the notice of opportunity to request administrative review for June anniversary orders, Commerce inadvertently listed an incorrect period of review (POR) for this proceeding.¹ Commerce noted this error in its *August Initiation Notice* in which it initiated the reviews for this proceeding using the correct POR of August 25, 2021, through May 31, 2023.² Commerce also noted the error in a subsequent opportunity notice, giving parties a further opportunity to request an administrative review using the correct POR.³ Commerce received timely requests, in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on raw honey from Vietnam pursuant to both the *June Opportunity Notice* and the *August Opportunity Notice*.

Commerce received numerous review requests pursuant to the *June Opportunity Notice*.⁴ Commerce received one review request pursuant to the *August Opportunity Notice* for Spring Honeybee Co., Ltd. Further, we note that while a review request was submitted for Thai Hoa Mat Bees Rasing Co., Ltd. pursuant to the *June Opportunity Notice*, Commerce did not initiate a review for this company in its *August Initiation Notice*.⁵ Commerce is hereby initiating an administrative review for both Spring Honeybee Co.,

Ltd. and Thai Hoa Mat Bees Rasing Co., Ltd. See "Initiation of Review" section below.

All deadlines referenced in the *August Initiation Notice* apply to those companies upon which Commerce initiated a review in the *August Initiation Notice* (e.g., Notice of No Sales, Particular Market Situation, Separate Rates, Duty Absorption Reviews). Commerce intends to conduct respondent selection based on the publication date of this notice. Additionally, the preliminary and final results deadlines remain aligned with the initiation of this proceeding made pursuant to the *August Initiation Notice*⁶ regardless of whether a review was requested pursuant to the *June Opportunity Notice* or the *August Opportunity Notice*.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for the administrative review initiated pursuant to requests made for the order identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of this initiation notice and to make our decision regarding respondent selection within 35 days of publication of this initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be "collapsed" (e.g., treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this

review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (e.g., investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to: (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

The following applies to Spring Honeybee Co., Ltd. and Thai Hoa Mat Bees Rasing Co., Ltd., the companies for which we are now initiating a review:

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at <https://access.trade.gov>, in accordance with 19 CFR 351.303.⁷ Such submissions are subject to verification, in accordance with section 782(i) of the Act. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

⁷ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 35835, 35837 (June 1, 2023) (*June Opportunity Notice*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 51271, 51276 (August 3, 2023) (*August Initiation Notice*).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 50840 (August 2, 2023) (*August Opportunity Notice*).

⁴ See *August Initiation Notice*.

⁵ See Letter, "Request for Antidumping Duty Administrative Review," dated June 30, 2023 and *August Initiation Notice*.

⁶ See *August Initiation Notice*.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.⁸ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce’s policy to assign all exporters of merchandise subject to an

administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in this administrative review, because it involves an NME country, must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For this administrative review, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce’s website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html> on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the “Instructions for Filing the Certification” in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice.

The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding⁹ should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate

in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,¹⁰ should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce’s website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html> on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for individual examination. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Review

In accordance with 19 CFR 351.221(c)(1)(i), in addition to the companies named in the *August Initiation Notice* for which Commerce has already initiated an administrative review, we are initiating an administrative review of the AD order on raw honey from Vietnam (A–552–833) for the below companies for the period 8/25/2021 through 5/31/2023: Spring Honeybee Co., Ltd., Thai Hoa Mat Bees Raising Co., Ltd.

We intend to issue the final results of this review no later than June 30, 2024.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under

⁸ See Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

⁹ Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (e.g., an ongoing administrative review, new shipper review, etc.) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

¹⁰ Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant “gap” period of the order (*i.e.*, the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce’s regulations at 19 CFR 351.305. Those procedures apply to administrative review included in this notice of initiation. Parties wishing to participate in this administrative review should ensure that they meet the requirements of these procedures (*e.g.*, the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce’s regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the

record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule*,¹¹ available at www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf, prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹²

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule*.¹³ Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.¹⁴ In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under

¹¹ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also the frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

¹² See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

¹³ See section 782(b) of the Act; see also *Final Rule*; and the frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

¹⁴ See 19 CFR 351.302.

certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule*, available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this segment.

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 15, 2023.

Scot Fullerton,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–20442 Filed 9–20–23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Research Grant Programs; Correction

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice; correction.

SUMMARY: On September 11, 2023, the Department of Education (Department) published a notice inviting applications (NIA) for new awards for fiscal year (FY) 2024 for the Research Training Programs in the Education Sciences, Research Networks Focused on Critical Problems of Education Policy and Practice, and Statistical and Research Methodology in Education Grant Programs, Assistance Listing Numbers (ALNs) 84.305B, 84.305D, and 84.305N. We are correcting the contact information for the 84.305N competition. All other information in the NIA remains the same.

DATES: This correction is applicable September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Teresa Cahalan, Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone:

(202) 245-7299. Email:

Teresa.Cahalan@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 September 11, 2023, the Department published an NIA for new awards for FY 2024 for the Research Training Programs in the Education Sciences, Research Networks Focused on Critical Problems of Education Policy and Practice, and Statistical and Research Methodology in Education Grant Programs, ALNs 84.305B, 84.305D, and 84.305N. (88 FR 62352). We are correcting the contact information for the 84.305N competition.

Corrections:

In FR Doc. No. 2023-19497, appearing on pages 62352-62356 of the **Federal Register** of September 11, 2023, we make the following corrections:

On page 62356, in the fifth column of the table, in the row labeled "Digital Learning Platform Network Research Teams", we remove "*Erin.Higgins@ed.gov*" and, in its place, add "*Erin.Higgins@ed.gov*".

Also on page 62356, in the fifth column of the table, in the row labeled "Career and Technical Education Network Research Teams", we remove "(202) 321-1299" and, in its place, add "(202) 987-0835".

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2023-20472 Filed 9-20-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0166]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2024 Amendment #3

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 23, 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 Carrie Clarady, 202-245-6347.

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: National Assessment of Educational Progress (NAEP) 2024 Amendment #3.

OMB Control Number: 1850-0928.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 860,132.

Total Estimated Number of Annual Burden Hours: 470,250.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107-279 Title III, section 303) requires the assessment to collect data on

specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s. In addition to the operational assessments, NAEP uses two other kinds of assessment activities: pilot assessments and special studies. Pilot assessments test items and procedures for future administrations of NAEP, while special studies (including the National Indian Education Study (NIES), the Middle School Transcript Study (MSTS), and the High School Transcript Study (HSTS)) are opportunities for NAEP to investigate particular aspects of the assessment without impacting the reporting of the NAEP results.

The initial request for clearance of NAEP 2024 received OMB approval in April 2023 (OMB #1850-0928 v.28). Amendment #1 to the NAEP 2024 clearance package received OMB approval in June 2023 (OMB #1850-0928 v.29), and Amendment #2 was approved in August 2023. Between Amendment #2 and Amendment #3, NCES made the decision to no longer use school staff to proctor accommodation sessions as previously included in early versions of Amendment #2. These changes are reflected in Amendment #3, and the communication materials, burden hours, and costs to the Federal Government to remove these activities as a result. The increased cost to the Federal Government is due to the need to hire additional Field Staff to conduct these separate sessions, resulting in an additional \$3,700,000. This revision provides minor updates Part A to detail the removal of the staff proctored accommodation sessions in the burden table and addition of teacher and school

questionnaires for the Field Trial to the burden table, updates to communication materials placeholders in Part B as well as adding a reference to Best Practices materials (Section B.3), updated and added final communication materials to Appendix D, new Assessment Management System (AMS) screenshots in Appendix I, and minor update to two items in Appendix J1 removing subitem text, and revised eNAEP and NAEPq login screenshots and paper booklet covers in J1, J2, J3, and J-S.

Dated: September 15, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-20391 Filed 9-20-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Docket No. 22-110-LNG]

Notice of Availability of the Draft Environmental Assessment for the New Fortress Energy Altamira FLNG Project

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) has prepared a Draft Environmental Assessment (EA) to determine how to review the potential environmental impacts associated with authorizing NFE Altamira FLNG, S. de R.L. de C.V. (NFE Altamira) to export U.S.-sourced natural gas to Mexico and, after liquefaction in Mexico, to other countries from the proposed NFE Altamira FLNG Project. DOE is also announcing a public comment period to receive comments on the Draft EA. DOE prepared the Draft EA in accordance with the National Environmental Policy Act of 1969 (NEPA), to inform its decision on authorization under the Natural Gas Act (NGA).

DATES: The 30-day public comment period extends from the date of publication of this Notice in the **Federal Register** through October 23, 2023.

ADDRESSES: Questions concerning the Draft EA or requests for a paper copy should be directed to: Brian Lavoie via email to brian.lavoie@hq.doe.gov or phone at (202) 586-2459.

Electronic Filing by email (Strongly encouraged): fergas@hq.doe.gov.

Postal Mail, Hand Delivery, or Private Delivery Services (e.g., FedEx, UPS,

etc.): U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E-056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit filings electronically to ensure timely receipt. DOE is concurrently providing notice of the Draft EA to the cross-border host state of Texas, and to all Indian Tribes on or within 100 kilometers of the U.S. border in that state.

An electronic copy of the Draft EA may be found online on the following website: https://www.energy.gov/sites/default/files/2023-09/NFE%20Altamira%20FLNG_Draft%20Environmental%20Assessment%20-Final%209.15.23.pdf.

FOR FURTHER INFORMATION CONTACT:

Brian Lavoie, U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-2459, brian.lavoie@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2022, NFE Altamira filed an application (Application)¹ with DOE's Office of Fossil Energy and Carbon Management (FECM) under section 3 of the NGA.² In the Application, NFE Altamira stated that it was submitting the Application in connection with the development of a floating liquefaction and export terminal project proposed by its affiliate, Mexico FLNG S. de R.L. de C.V.³ This proposed facility, known as New Fortress Energy's Altamira FLNG Project (Project),⁴ would be located off the coast of Altamira, Tamaulipas, Mexico, in the Gulf of Mexico.⁵

¹ NFE Altamira FLNG, S. de R.L. de C.V., Application for Long-Term, Multi-Contract Authorizations to Export Natural Gas to Mexico and to Re-Export Liquefied Natural Gas from Mexico to Free Trade Agreement and Non-Free Trade Agreement Nations, Docket No. 22-110-LNG (Sept. 9, 2022) [hereinafter NFE Altamira App.].

² 15 U.S.C. 717b. The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

³ NFE Altamira App. at 2.

⁴ The acronym "FLNG" in the natural gas industry refers to "floating liquefied natural gas."

⁵ NFE Altamira App. at 2, 5, 18.

NFE Altamira requests long-term, multi-contract authorization to export U.S.-sourced natural gas to Mexico, and after liquefaction in Mexico, to other countries as described below, in a combined total volume equivalent to 158 billion cubic feet (Bcf) per year (Bcf/yr) of natural gas (0.43 Bcf per day (Bcf/d)).⁶ NFE Altamira seeks to export this volume of natural gas for the following purposes:

(i) To use approximately 13 Bcf/yr (0.03 Bcf/d) in Mexico as "fuel in the liquefaction process and [] process gas loss during the pretreatment process;"⁷ and

(ii) To use approximately 145 Bcf/yr of natural gas (0.40 Bcf/d) of natural gas in the proposed Project, where the U.S.-sourced natural gas would be liquefied, then re-exported⁸ as liquefied natural gas (LNG) by vessel to:

(a) Any country with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), under NGA section 3(c);⁹ and

(b) Any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), under NGA section 3(a).¹⁰

NFE Altamira further states that it seeks these authorizations "in order to re-export from Mexico U.S.-sourced natural gas for which it has acquired title in the United States, as well as U.S.-sourced volumes for which it acquires title in Mexico."¹¹ NFE Altamira requests the FTA and non-FTA authorizations on a non-additive basis for a term to commence on the date of first export following the commencement of commercial operation of the Project, and extending through December 31, 2050.¹²

⁶ *Id.* at 1.

⁷ *Id.* at 5 (stating that the two liquefaction systems would consume approximately 6.5 Bcf/yr of natural gas each, for a total of 13 Bcf/yr of natural gas) & n.13.

⁸ For purposes of this proceeding, "re-export" means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE's jurisdiction under the NGA, 15 U.S.C. 717b, from one foreign country (*i.e.*, a country other than the United States) to another foreign country.

⁹ 15 U.S.C. 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

¹⁰ 15 U.S.C. 717b(a); *see* NFE Altamira App. at 2, 7.

¹¹ NFE Altamira App. at 2.

¹² *Id.* at 2-3, 7.

On March 3, 2023, in Order No. 4960, DOE granted the FTA portion of the Application, as required by NGA section 3(c).¹³ NFE Altamira is thus authorized to export natural gas to Mexico in the total requested volume of 158 Bcf/yr of natural gas—which includes export by pipeline (13 Bcf/yr) and re-export after liquefaction in Mexico to FTA countries (145 Bcf/yr equivalent).¹⁴ The requested non-FTA volume, if approved, would not be additive to this FTA volume.

According to NFE Altamira, the U.S.-sourced natural gas for which it has acquired title in the United States would be exported to Mexico at the United States-Mexico border via the existing border-crossing facilities of Valley Crossing Pipeline, LLC (Valley Crossing Pipeline), and potentially, cross-border natural gas pipelines that may be constructed in the future and that interconnect with the Sur de Texas–Tuxpan Pipeline offshore natural gas pipeline system in Mexican waters.¹⁵ Additionally, NFE Altamira states that it may purchase U.S.-sourced natural gas in Mexico from upstream suppliers who have exported the natural gas from the United States (under the supplier's own FTA export authorization or under this requested authorization), with NFE Altamira acting as agent.¹⁶ Once constructed, the Project would be capable of receiving, processing, and liquefying the U.S.-sourced natural gas, storing the resulting LNG, and loading the LNG onto ocean-going LNG vessels for delivery to export destinations.¹⁷

For the non-FTA portion of NFE Altamira's request,¹⁸ DOE published a notice of the Application in the **Federal Register** (Notice of Application) on October 6, 2022.¹⁹ The Notice of Application called on interested persons to submit protests, motions to intervene, notices of intervention, and comments by December 5, 2022.²⁰ On December 5,

2022, Sierra Club filed a Motion to Intervene and Protest, with accompanying exhibits, opposing the non-FTA portion of NFE Altamira's Application.²¹ Sierra Club supplemented its filing on December 9, 2022, with electronic copies of documents that were hyperlinked in its initial filing. NFE Altamira filed an Answer in Opposition to Sierra Club's Protest on December 20, 2022.²²

Before reaching a final decision on a non-FTA application under NGA section 3(a), DOE must also comply with NEPA.²³ In evaluating applications for re-export authorization similar to NFE Altamira's Application, DOE has used recent guidance to inform its environmental analysis. On January 27, 2021, the President issued Executive Order (E.O.) No. 14008, *Tackling the Climate Crisis at Home and Abroad*.²⁴ Additionally, on April 20, 2022, the Council on Environmental Quality (CEQ) issued a final rule for implementing CEQ's NEPA regulations, including the definition of environmental “effects.”²⁵ DOE has determined that, consistent with E.O. 14008 and its obligations under NEPA, it is appropriate to evaluate the potential environmental impacts—including the greenhouse gas emissions—of exporting (or re-exporting) U.S.-sourced LNG from the proposed Project to non-FTA countries. Therefore, on June 27, 2023, DOE issued a “Notice of Environmental Assessment” announcing that it is undertaking an EA under NEPA to analyze NFE Altamira's requested exports of U.S.-sourced natural gas as LNG to non-FTA countries.²⁶

The Draft EA examined the potential environmental impacts associated with

unconventional natural gas exploration and production activities in the lower-48 states; the utilization of the cross-border pipeline facilities in Texas named in the Application that interconnect the United States and Mexico and that NFE Altamira may utilize for its U.S. natural gas supply; descriptions of Mexico's environmental review process for the construction and operation of liquefaction terminals and related facilities; marine transport of LNG exported from the proposed Project; and the global nature of GHG emissions associated with re-exporting U.S.-sourced natural gas as LNG from Mexico from a life cycle perspective.

NEPA Process and Public Involvement

DOE prepared the Draft EA in accordance with the CEQ regulations at Title 40, *Code of Federal Regulations*, parts 1500–1508 (40 CFR parts 1500–1508) and DOE NEPA implementing procedures at 10 CFR part 1021. DOE published a Notice of Environmental Assessment to Docket No. 22–110–LNG on June 27, 2023, announcing its intent to prepare an EA. DOE is providing opportunities for public review and comments on this Draft EA (see **DATES** and **ADDRESSES** sections of this notice).

Signed in Washington, DC, on September 15, 2023.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2023–20427 Filed 9–20–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–503–000; Docket No. CP22–502–000]

Columbia Gas Transmission, LLC, Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Virginia Reliability Project Commonwealth Energy Connector Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Virginia Reliability Project (VRP), proposed by Columbia Gas Transmission, LLC (Columbia), and the Commonwealth Energy Connector Project (CEC Project) proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced dockets.

¹³ NFE Altamira FLNG, *S. de R.L. de C.V.*, DOE/ FERC Order No. 4960, Docket No. 22–110–LNG, Order Granting Long-Term Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (Mar. 3, 2023).

¹⁴ See *id.* at 4, 15–16.

¹⁵ *Id.* at 1 & n.5, 6.

¹⁶ *Id.* at 5–6, 8–9.

¹⁷ *Id.* at 5–7.

¹⁸ DOE finds that the requirement for public notice of applications, as well as other hearing-type procedures in 10 CFR part 590, will apply only to applications seeking to export natural gas, including LNG, to non-FTA countries.

¹⁹ See NFE Altamira FLNG, *S. de R.L. de C.V.*; Application for Long-Term, Multi-Contract Authorization To Export Domestically Produced Natural Gas to Mexico and To Re-Export Liquefied Natural Gas From Mexico to Non-Free Trade Agreement Countries; Notice of Application, 87 FR 60667 (Oct. 6, 2022) [hereinafter Notice of App.].

²⁰ *Id.* at 87 FR 60668.

²¹ Sierra Club, Motion to Intervene and Protest of NFE Altamira FLNG's Request for Export and Re-Export Authorization, Docket No. 22–110–LNG (Dec. 5, 2022).

²² NFE Altamira FLNG, *S. de R.L. de C.V.*, Answer in Opposition to Protest of Sierra Club, Docket No. 22–110–LNG (Dec. 20, 2022).

²³ 42 U.S.C. 4321 *et seq.*

²⁴ E.O. 14008 sets forth policies to address climate change, specifically to “organize and deploy the full capacity of [Federal] agencies to combat the climate crisis.” Exec. Order No. 14008 of Jan. 27, 2021, *Tackling the Climate Crisis at Home and Abroad*, 86 FR 7619 (Feb. 1, 2021), <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>. E.O. 14008 further requires the “Federal Government [to] drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector” of the U.S. economy. *Id.*

²⁵ See Council on Env'tl. Quality, National Environmental Policy Act Implementing Regulations Revisions; Final Rule, 87 FR 23453 (Apr. 20, 2022).

²⁶ NFE Altamira FLNG, *S. de R.L. de C.V.*, Notice of Environmental Assessment, Docket No. 22–110–LNG (June 27, 2023).

Columbia requests authorization to construct and operate its VRP in Greenville, Prince George, Sussex, Surry, Southampton, and Isle of Wight Counties, Virginia, and in the cities of Suffolk and Chesapeake, Virginia. The VRP is designed to provide an additional 100,000 Dekatherms per day (Dth/d) of firm transportation service for Virginia Natural Gas, Inc. (VNG), from the existing interconnection between Transco and Columbia in Greenville County, Virginia to VNG's existing delivery point in Chesapeake County, Virginia.

Transco requests authorization to construct, operate, and maintain its CEC Project in Mecklenburg, Brunswick, and Greenville Counties, Virginia. The CEC Project is designed to provide an additional 105,000 Dth/d of firm transportation service for VNG from Transco's existing Station 165 Zone 5 Pooling Point in Pittsylvania County, Virginia, to the existing interconnection between Transco and Columbia in Greenville County, Virginia, where VNG has contracted with Columbia for further firm transportation service.

The final EIS assesses the potential environmental effects of the construction and operation of the VRP and the CEC Project (the Projects) in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Projects, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts; however, with the exception of potential impacts on climate change, FERC staff concludes that impacts would not be significant. Climate change impacts are not characterized in the EIS as significant or insignificant.

The U.S. Army Corps of Engineers (USACE), Norfolk District, and the U.S. Fish and Wildlife Service (USFWS) participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although these agencies provided input to the conclusions and recommendations presented in the EIS, the agencies may present their own conclusions and recommendations in any applicable Records of Decision or other documentation for the Projects.

The final EIS addresses the potential environmental effects of the construction and operation of the following VRP facilities, all in Virginia:

- replacement of about 49.2 miles of the existing 12-inch-diameter VM-107 and VM-108 pipelines with 24-inch-

diameter pipeline mostly within Columbia's existing right-of-way, in Sussex, Surry, Southampton, and Isle of Wight Counties, as well as in the cities of Suffolk and Chesapeake;

- installation of one new 5,500-horsepower (HP) dual-drive compressor unit at the existing Emporia Compressor Station in Greenville County;
- modification of the existing compressor units and an increase in power by 2,700 HP at the existing Petersburg Compressor Station in Prince George County;
- modification of the Emporia Point of Receipt in Greenville County, Regulator Station 7423 in Prince George County, and MS-831010 Point of Delivery in Chesapeake; and
- replacement of eight mainline valves (MLV), installation of one new MLV and five new launchers/receivers, and replacement or installation of other minor appurtenant facilities.

The final EIS addresses the potential environmental effects of the construction and operation of the following CEC Project facilities, all in Virginia:

- construction of a 6.35-mile-long, 24-inch-diameter pipeline loop¹ (referred to as the Commonwealth Loop), including valve and launcher/receiver facilities, in Brunswick and Greenville Counties;
- addition of a 33,000-HP electric motor-driven compressor unit at the existing Compressor Station 168 in Mecklenburg County; and
- modification of the existing Emporia Metering and Regulation Station in Greenville County.

The Commission mailed a copy of the *Notice of Availability* to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the area of the Projects. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search", and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.*,

CP22-503 or CP22-502). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Additional information about the Projects is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: September 15, 2023.

Kimberly D. Bose

Secretary.

[FR Doc. 2023-20458 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-2838-000]

BCD 2023 Fund 1 Lessee, 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 BCD 2023 Fund 1 Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for

¹ A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

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 October 5, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (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: September 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-20465 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-2837-000]

Earp 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 Earp 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 October 5, 2023.

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Dated: September 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-20466 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23-131-000.

Applicants: Cascade Energy Storage, LLC, Sierra Energy Storage, LLC, BRP Capital & Trade LLC, ENGIE Flexible Generation NA LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Cascade Energy Storage, LLC, et al.

Filed Date: 9/14/23.

Accession Number: 20230914–5154.

Comment Date: 5 p.m. ET 10/5/23.

Docket Numbers: EC23–132–000.

Applicants: Earp Solar, LLC, BCD 2023 Fund 1 Lessee, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Earp Solar, LLC.

Filed Date: 9/14/23.

Accession Number: 20230914–5156.

Comment Date: 5 p.m. ET 10/5/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–288–000.

Applicants: Maverick Clean Energy Center, LLC.

Description: Maverick Clean Energy Center, LLC. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/14/23.

Accession Number: 20230914–5087.

Comment Date: 5 p.m. ET 10/5/23.

Docket Numbers: EG23–289–000.

Applicants: Harris Spencer BESS, LLC.

Description: Harris Spencer BESS, LLC. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/14/23.

Accession Number: 20230914–5092.

Comment Date: 5 p.m. ET 10/5/23.

Docket Numbers: EG23–290–000.

Applicants: Brazoria Winmil BESS, LLC.

Description: Brazoria Winmil BESS, LLC. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/14/23.

Accession Number: 20230914–5094.

Comment Date: 5 p.m. ET 10/5/23.

Docket Numbers: EG23–291–000.

Applicants: Harris CenterPoint BESS, LLC.

Description: Harris CenterPoint BESS, LLC. submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/14/23.

Accession Number: 20230914–5100.

Comment Date: 5 p.m. ET 10/5/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1365–004.

Applicants: Morris Cogeneration, LLC.

Description: Compliance filing: Compliance to 593 to be effective N/A.

Filed Date: 9/15/23.

Accession Number: 20230915–5125.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2843–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 7072; Queue No. AE2–299 to be effective 8/16/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5011.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2844–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, Service Agreement No. 5803; Queue No. AF2–270 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5016.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2845–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: SPS Attachment O—CIAC Workpaper Filing to be effective 1/1/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5033.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2847–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–09–15 ICAP Deferral Clean-Up Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5050.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2848–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4128 Omaha Public Power District Sponsored Upgrade Agreement to be effective 8/23/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5052.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2849–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5726; Queue No. AE1–188/AF1–224 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5054.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2850–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205: LGIA Sunrise Offshore Wind Project SA2795 (CEII) to be effective 8/31/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5058.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2851–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–09–15 New DTBAOA and Terminate DSHBAOA—CAISO and APS to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5072.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2852–000.

Applicants: Airport Solar LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5076.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2853–000.

Applicants: Arroyo Solar LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5079.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2854–000.

Applicants: Arroyo Energy Storage LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5080.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2855–000.

Applicants: Assembly Solar III, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5081.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2856–000.

Applicants: Willow Springs Solar, LLC.

Description: § 205(d) Rate Filing: Willow Springs Solar, LLC to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5082.

Comment Date: 5 p.m. ET 10/6/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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: September 15, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-20469 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23-11-000]

System Energy Resources, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

September 15, 2023.

On December 23, 2022, the Commission issued an order in Docket No. EL23-11-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether System Energy Resources, Inc.'s (SERI) failure to return to customers the value of certain excess Accumulated Deferred Income Taxes prior to the U.S. Internal Revenue Service's resolution of SERI's nuclear decommissioning tax deductions is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *System Energy Resources, Inc.*, 181 FERC ¶ 61,244 (2022).

The refund effective date in Docket No. EL23-11-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

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 FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: September 15, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-20459 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), DOE.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, all agencies are required to publish in the **Federal Register** a notice of their systems of records. Notice is hereby given that the Federal Energy Regulatory Commission (FERC) is publishing a notice of modifications to an existing FERC system of records, FERC-42 titled "*Commission Security Access and Control Records*."

DATES: Please submit comments on this modified system of records on or before October 23, 2023. These new routine

uses are effective October 23, 2023. If no public comment is received during this period or unless otherwise published in the **Federal Register** by FERC, the modified system of records will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 or electronically to privacy@ferc.gov. Comments should indicate that they are submitted in response to "Commission Security Access and Control Records" (FERC-42).

FOR FURTHER INFORMATION CONTACT: Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6432.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, and to comply with the Office of Management and Budget (OMB) Memorandum M-17-12, *Preparing for and Responding to a Breach of Personally Identifiable Information*, January 3, 2017, this notice will incorporate two new routine uses that permit FERC to disclose information as necessary in response to an actual or suspected breach that pertains to a breach of its own records or to assist another agency in its efforts to respond to a breach that was previously published separately at 87 FR 35543 and added 11 routine uses that are consistent with OPM guidance. The following sections have been updated: dates; addresses; for further contact information; system name and number; system location; system manager; authority for maintenance of the system; purpose; categories of individuals covered by the system; categories of records in the system; routine uses of records maintained in the system, including categories of users and the purpose of such; policies and practices for storage of records; policies and practices for retrieval of records; policies and practices for retention and disposal of records; administrative, technical, and physical safeguards; record access procedures; contesting record procedures; notification procedures; and history.

SYSTEM NAME AND NUMBER:

Commission Security Access and Control Records (FERC-42)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of the Executive Director, Chief Security Officer Directorate, Mission Integrity Division, 888 First Street, Washington, DC 20426.

SYSTEM MANAGER(S):

Director, Federal Energy Regulatory Commission, Chief Security Officer Directorate, Mission Integrity Division, 888 First Street NE, Washington, DC 20426.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 102–74.375

PURPOSE(S) OF THE SYSTEM:

Records in this system of records are maintained for the following purposes: providing access control permission to FERC's facilities as well as visitors' security and management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: current and former FERC employees, current and former FERC contractors, and members of the public visiting FERC facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include: full name; telephone number; badge access permission; signature; driver license and/or ID information including ID number, date of issuance, state of issuance, expiration date, and other identifying information contained therein; passport information including number, issuance date, expiration date, and other identifying information contained therein; digital copies of driver license, ID, and passport; and the date, time and entry point of building access.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from the individual to whom the records pertain.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information maintained in this system may be disclosed to authorized entities outside FERC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (1) FERC suspects or

has confirmed that there has been a breach of the system of records; (2) FERC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (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 Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when FERC 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.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

5. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

7. To the Department of Justice (DOJ) for its use in providing legal advice to FERC or in representing FERC in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by FERC to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) FERC; (b) any

employee of FERC in his or her official capacity; (c) any employee of FERC in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States, where FERC determines that litigation is likely to affect FERC or any of its components.

8. To non-Federal Personnel, such as contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FERC or Federal Government and who have a need to access the information in the performance of their duties or activities.

9. To the National Archives and Records Administration in records management inspections and its role as Archivist.

10. To the Merit Systems Protection Board or the Board's Office of the Special Counsel, when relevant information is requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, and investigations of alleged or possible prohibited personnel practices.

11. To appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order.

12. To appropriate agencies, entities, and person(s) that are a party to a dispute, when FERC determines that information from this system of records is reasonably necessary for the recipient to assist with the resolution of the dispute; the name, address, telephone number, email address, and affiliation; of the agency, entity, and/or person(s) seeking and/or participating in dispute resolution services, where appropriate.

13. To Department of Energy (DOE) to manage visitors access to FERC facilities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored in FERC IT system and access to electronic records is controlled by User ID and password combination and/or the organizations Single Sign-On and Multi-Factor Authentication solution. Paper records are stored in a lockable file room. Access to electronic and paper records is restricted to those individuals whose official duties require access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual's name, date, employee badge number, card reader, or other

identifying information provided by the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the schedule approved under the National Archives and Records Administration's General Records Schedule 5.6: Security Management Records:

Item 110: Visitor Processing Records, areas requiring highest level security awareness, Disposition Authority: DAA-GRS-2017-0006-0014. Temporary. Destroy when 5 (five) years old, but longer retention is authorized if required for business use.

Item 111: Visitor Processing Records, all other facility security areas, Disposition Authority: DAA-GRS-2017-006-0015. Temporary. Destroy when two (2) years old but longer retention is authorized if required for business use.

Item 120: Personal Identification Credentials and Cards, Application and Activation Records, Disposition Authority: DAA-GRS-2021-0001-0005. Temporary. Destroy six (6) years after the end of an employee or contractor's tenure, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

See Policies and Practices for Storage of Records.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Records Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

65 FR 21756.

Issued: September 15, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-20457 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP23-541-000.

Applicants: Intermountain Gas Company.

Description: Intermountain Gas Company submits Application for a Certificate of Public Convenience and Necessity for Authorization to Engage in the Transportation of Natural Gas.

Filed Date: 9/12/23.

Accession Number: 20230912-5194.

Comment Date: 5 p.m. ET 10/3/23.

Docket Numbers: RP23-1036-000.

Applicants: Dauphin Island Gathering Partners.

Description: Cashout Report of Dauphin Island Gathering Partners for the period of May 1, 2022, through April 30, 2023.

Filed Date: 9/13/23.

Accession Number: 20230913-5086.

Comment Date: 5 p.m. ET 9/25/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: September 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-20417 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23-1037-000.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: § 4(d) Rate Filing: GLGT—Tenaska NR Agmt Filing to be effective 9/14/2023.

Filed Date: 9/14/23.

Accession Number: 20230914-5088.

Comment Date: 5 p.m. ET 9/26/23.

Docket Numbers: RP23-1038-000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming—REA Interim Firm Service—Various Shippers to be effective 10/15/2023.

Filed Date: 9/14/23.

Accession Number: 20230914-5093.

Comment Date: 5 p.m. ET 9/26/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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: September 15, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-20467 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-2842-000]

Sunnyside Cogeneration Associates; 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 Sunnyside Cogeneration Associates' 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 October 5, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in

docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (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: September 15, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-20464 Filed 9-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2354-170]

Georgia Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type*: Non-Capacity Amendment of License.

b. *Project No.*: 2354-170.

c. *Date Filed*: April 4, 2023, and supplemented on August 3, 2023, and August 9, 2023.

d. *Applicant*: Georgia Power Company.

e. *Name of Project*: North Georgia Project.

f. *Location*: Savannah River basin on the Tallulah, Chattooga, and Tugalo Rivers, in Rabun, Habersham, and Stephens counties, Georgia, and Oconee County, South Carolina.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Courtenay O'Mara, Hydro Licensing & Compliance Supervisor, 241 Ralph McGill Boulevard, NE, BIN 10193, Atlanta, Georgia 30308-3374, 404-506-7219, cromara@southernco.com.

i. *FERC Contact*: Aneela Mousam, (202) 502-8357, aneela.mousam@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests*: 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/doc-sfiling/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P-2354-170. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that

may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Georgia Power Company (licensee) requests Commission approval to replace and upgrade two generating units in the Nacoochee powerhouse. The licensee proposes to replace turbine runners and generators. The proposed upgrades would increase the Nacoochee Development's installed capacity from 4.8 megawatt (MW) to 5.48 MW. The maximum hydraulic capacity would decrease from 1,382 cubic feet per second (cfs) to 1,258 cfs (9% decrease). The licensee does not anticipate any adverse effect to environmental resources as a result of the proposed amendment.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <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. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone

number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. 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: September 15, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-20455 Filed 9-20-23; 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: ER23-2857-000.

Applicants: MS Solar 2, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5158.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2858-000.

Applicants: Balko Wind, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5084.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2859-000.

Applicants: Balko Wind Transmission, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5087.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2860-000.

Applicants: DWW Solar II, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5090.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2861-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of Interim ISA, SA No. 5471; Queue No. AC1-051 to be effective 1/10/2022.

Filed Date: 9/15/23.

Accession Number: 20230915-5097.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2862-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 3407; Queue No. W4-001A_AT9 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5117.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2863-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6398; Queue No. AG1-029 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5124.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2864-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Designated Entity Agreement, SA No. 7062 between PJM and PPL EU to be effective 8/16/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5127.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2865-000.

Applicants: Cove Mountain Solar 2, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5142.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23-2866-000.

Applicants: Cove Mountain Solar, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915-5143.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2867–000.
Applicants: Hunter Solar LLC.
Description: § 205(d) Rate Filing:
 Revised Market-Based Rate Tariff Filing
 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5144.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2868–000.

Applicants: Rancho Seco Solar, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff Filing
 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5145.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2869–000.

Applicants: Sigurd Solar LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff Filing
 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5146.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2870–000.

Applicants: Drew Solar-CA, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff Filing
 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5147.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2871–000.

Applicants: Drew Solar, LLC.

Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff Filing
 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5149.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2872–000.

Applicants: PJM Interconnection,
 L.L.C.

Description: Tariff Amendment:
 Notice of Cancellation of ISA, SA No.
 3407; Queue No. W4–001A_AT9 to be
 effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5160.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2873–000.

Applicants: Mid-Atlantic Interstate
 Transmission, LLC, PJM
 Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Mid-
 Atlantic Interstate Transmission, LLC
 submits tariff filing per 35.13(a)(2)(iii):
 MAIT Submits Revised Interconnection
 Agreement, Service Agreement No. 4578
 to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5165.

Comment Date: 5 p.m. ET 10/6/23.

Docket Numbers: ER23–2874–000.

Applicants: NorthWestern Energy
 Public Service Corporation.

Description: Baseline eTariff Filing:
 NWPS Baseline Market Based Rate
 Tariff to be effective 11/15/2023.

Filed Date: 9/15/23.

Accession Number: 20230915–5172.

Comment Date: 5 p.m. ET 10/6/23.

Take notice that the Commission
 received the following electric
 reliability filings:

Docket Numbers: RR23–2–001.

Applicants: North American Electric
 Reliability Corporation.

Description: Revised SERC Reliability
 Corporation Report of Comparisons of
 Budgeted to Actual Costs for 2022.

Filed Date: 9/14/23.

Accession Number: 20230914–5123.

Comment Date: 5 p.m. ET 10/5/23.

Docket Numbers: RR23–4–000.

Applicants: North American Electric
 Reliability Corporation.

Description: Petition of the North
 American Electric Reliability
 Corporation for approval of revisions to
 the NERC Rules of Procedure regarding
 Reliability Standards.

Filed Date: 9/15/23.

Accession Number: 20230915–5151.

Comment Date: 5 p.m. ET 10/6/23.

The filings are accessible in the
 Commission's eLibrary system ([https://
 elibrary.ferc.gov/idmws/search/
 fercensearch.asp](https://elibrary.ferc.gov/idmws/search/fercensearch.asp)) by querying the
 docket number.

Any person desiring to intervene, to
 protest, or to answer a complaint in any
 of the above proceedings must file in
 accordance with Rules 211, 214, or 206
 of the Commission's Regulations (18
 CFR 385.211, 385.214, or 385.206) 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](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](mailto:OPP@ferc.gov).

Dated: September 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–20468 Filed 9–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–536–000]

Eastern Shore Natural Gas Company; Notice of Application and Establishing Intervention Deadline

Take notice that on August 31, 2023,
 Eastern Shore Natural Gas Company
 (Eastern Shore), 500 Energy Lane, Suite
 200, Dover, Delaware, 19901, filed an
 application under section 7(c) of the
 Natural Gas Act (NGA), and part 157 of
 the Commission's regulations requesting
 authorization for its Worcester
 Resiliency Upgrade Project (Project).
 The Project consists of the installation
 of five (5) liquefied natural gas (LNG)
 storage tanks and LNG vaporizers in
 Worcester County, MD. Eastern Shore
 also proposes to install approximately
 1.1 miles of 10-inch-diameter pipeline
 looping in Sussex County, DE and
 Wicomico County, MD, upgrades to an
 existing pressure control station in
 Sussex County, DE, and upgrades to
 three (3) existing meter and regulating
 (M&R) stations in Sussex County, DE,
 Worcester County, MD, and Somerset
 County, MD. The Project is designed to
 store approximately 475,000 gallons of
 LNG, equivalent to 39,627 Dth, and
 provide 14,000 Dth/d of corresponding
 peak firm natural gas transportation
 service, as well as enhance the
 resiliency of Eastern Shore's system.
 Eastern Shore estimates the total cost of
 the Project to be \$79,878,927 and
 proposes an initial recourse rate under
 new Rate Schedules PEAK–FT and
 PEAK–IT, all as more fully set forth in
 the application which is on file with the
 Commission and open for public
 inspection.

In addition to publishing the full text
 of this document in the **Federal
 Register**, the Commission provides all
 interested persons an opportunity to
 view and/or print the contents of this
 document via the internet through the
 Commission's Home Page
 (www.ferc.gov) using the "eLibrary"
 link. Enter the docket number excluding
 the last three digits in the docket
 number field to access the document. At
 this time, the Commission has
 suspended access to the Commission's
 Public Reference Room. For assistance,
 contact the Federal Energy Regulatory

Commission at FercOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY (202) 502-8659.

Any questions regarding the proposed project should be directed to Matt Everngam, Director, Regulatory Affairs, Eastern Shore Natural Gas Company, 500 Energy Lane, Suite 200, Dover, DE 19901 by phone 1-844-366-3764 or by email to meverngam@chpk.com.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Water Quality Certification

Eastern Shore's application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from Delaware's DNREC Division of Water Resources and Maryland's MDE Water Management Administration. The request for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 6, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before October 6, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP23-536-000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must

first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP23-536-000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁶ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is October 6, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as

¹ 18 CFR (Code of Federal Regulations) 157.9.

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 385.2001.

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23–536–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23–536–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail or email at: Matt Everngam, Director, Regulatory Affairs, Eastern Shore Natural Gas Company, 500 Energy Lane, Suite 200, Dover, DE 19901 or by email to meverngam@chpk.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.¹¹ A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Intervention Deadline: 5:00 p.m. Eastern Time on October 6, 2023.

Dated: September 15, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–20456 Filed 9–20–23; 8:45 am]

BILLING CODE 6717–01–P

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

¹¹ 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0001]

Menopause: Potential Impact on Clinical Pharmacology and Opportunities for Future Research; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Office of Women's Health and Office of Clinical Pharmacology is announcing the following public workshop: "Menopause: Potential Impact on Clinical Pharmacology and Opportunities for Future Research." The purpose of the public workshop is to discuss the current understanding of the impact of menopause on the pharmacokinetics (PK), pharmacodynamics (PD), and exposure-response relationships of FDA-regulated drugs and biologics used by menopausal women for non-menopause-related indications. Researchers, educators, clinicians, and patients may benefit from attending this scientific workshop. Presentations will discuss whether changes in drug absorption, distribution, metabolism, and elimination, if any, could be affected by hormonal changes of menopause (independent of age), or other non-hormonal influences (including age-related renal and hepatic changes). The discussion is further intended to identify the research and data gaps regarding the potential impact of menopause on PK/PD. Speakers will highlight areas with the greatest need for further research and exploration.

DATES: The public workshop will be held virtually on October 11, 2023, from 10 a.m. to 2 p.m. Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held virtually using the Zoom platform. The link for the public workshop will be sent to registrants upon registration.

FOR FURTHER INFORMATION CONTACT: Lisa Lineberger, Food and Drug Administration, Office of the Commissioner, Office of Women's Health, Bldg. 32, Rm. 2333, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8751, OWHmeetings@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Menopause is often a time of tremendous transition and change for women. The effects of menopause on the PK and PD of drugs are largely unknown. Sex hormone changes during menopause may affect the metabolic pathways of drugs by affecting drug metabolizing enzymes. Hormone changes may also affect other pathways that play an important role for drug disposition and excretion. In addition, many women experience weight gain at menopause. Together, these changes associated with menopausal transition have the potential to affect the PK of medications used for indications not related to menopause. Furthermore, physiologic changes in menopause may result in altered sensitivity to drug response independent of changes in PK. This public workshop will provide insight into identifying the research and data gaps regarding the potential impact of menopause on PK/PD, highlighting areas with the greatest need for further research and exploration.

II. Topics for Discussion at the Public Workshop

This public workshop will include presentations and session discussions by experts in the fields of clinical pharmacology, obstetrics and gynecology, endocrinology, and clinical care. Each session will include a Q&A session to respond to questions from attendees.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website: <https://www.fda.gov/consumers/public-meetings-workshops-and-webinars/menopause-potential-impact-clinical-pharmacology-and-opportunities-future-research-10112023>. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Registrants will receive confirmation when they have been accepted. If you need special accommodations due to a disability, please contact Lisa Lineberger at OWHmeetings@fda.hhs.gov no later than October 10, 2023.

Dated: September 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20454 Filed 9–20–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0908]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Food and Drug Administration Form 3503

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by October 23, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted 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. The OMB control number for this information collection is 0910–0016. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions; and Electronic Submission Using Form FDA 3503–21 CFR 70.25, 71.1, and 171.1 and 21 CFR parts 172, 173, 179, and 180 OMB Control Number 0910–0016—Extension.

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) the additive and its use, or intended use, are in conformity with a regulation issued under section 409 that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) is effective. Food Additive Petitions (FAPs) are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 of FDA’s regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 179, and 180 (21 CFR parts 172, 173, 179, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the FD&C Act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f). Color Additive Petitions (CAPs) are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 of the Agency’s regulations (21 CFR 71.1) specifies the information that a petitioner must submit to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA’s color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, cosmetics, or medical devices be labeled with sufficient information to ensure their safe use.

FDA scientific personnel review FAPs to ensure the safety of the intended use of the additive in or on food, or that may be present in food as a result of its use in articles that contact food. Likewise, FDA personnel review CAPs to ensure the safety of the color additive prior to its use in food, drugs, cosmetics, or medical devices.

Respondents may transmit FAP or CAP regulatory submissions in electronic format or paper format to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition (CFSAN) using Form FDA 3503. Form FDA 3503 helps the respondent organize their submission to focus on the information needed for FDA’s safety review. Form FDA 3503 can also be used to organize information within a master file submitted in support of petitions according to the items listed on the form. Master files can be used as repositories for information that can be referenced in multiple submissions to the Agency,

thus minimizing paperwork burden for food and color additive approvals. We improved the information collection by using the CFSAN Online Submission Module (COSM). COSM provides a real-time user interface process that assists respondents in preparing and making submissions to CFSAN. COSM is a web-based tool that supports electronic submissions, thereby eliminating the need for printing and mailing of paper submissions. COSM is available 24 hours a day and 7 days a week. Further information about COSM, including user instruction, is available on the internet at: [https://www.fda.gov/food/registration-food-facilities-and-other-](https://www.fda.gov/food/registration-food-facilities-and-other-submissions/cfsan-online-submission-module-cosm)

[submissions/cfsan-online-submission-module-cosm](https://www.fda.gov/food/registration-food-facilities-and-other-submissions/cfsan-online-submission-module-cosm).
Description of respondents: Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food. In the **Federal Register** of February 1, 2023 (88 FR 6757), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited. We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity/21 CFR section; or FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Submission of Petitions: Color Additive Including Labeling—70.25 and 71.1	2	1	2	1,337	2,674	\$5,600
Submission of Petitions: Food Additive Including Labeling—171.1	3	1	3	7,093	21,279	0
Form FDA 3503 ²	5	1	5	1	5	0
Total					23,958	5,600

¹ There are no capital costs associated with this collection of information.
² Form FDA 3503 is used for both CAPs and FAPs.

We have adjusted our burden estimate, which has resulted in a decrease to the currently approved burden by 1 hour. Our estimate of burden attributable to FAPs or CAPs is based on our experience with the information collection, which has not changed since our last review, and reflects the average number of petitions we have received annually over a period of 10 years. The attendant burden we estimate also reflects an industry average, although burden associated with individual petitions may vary depending on the complexity of the petition, and the amount and type of data needed for scientific analysis. CAPs are subject to fees. The listing fee for a CAP ranges from \$1,600 to \$3,000, depending on the intended use of the color additive and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of one Category A and one Category B CAP is expected per year. The maximum CAP fee for a Category A petition is \$2,600, and the maximum CAP fee for a Category B petition is \$3,000. Because an average of two CAPs are expected per calendar year, the estimated total annual cost burden to petitioners for this startup

cost would be less than or equal to \$5,600 ((1 × \$2,600) + (1 × \$3,000) listing fees). There are no capital costs associated with CAPs. The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the FD&C Act and other specific labeling Acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §§ 70.25 and 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 179, and 180 for particular food additives involve information required as part of

the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.
Dated: September 18, 2023.
Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2023–20451 Filed 9–20–23; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
[Docket No. FDA–2023–N–3742]
Scientific Challenges and Opportunities To Advance the Development of Individualized Cellular and Gene Therapies; Request for Information
AGENCY: Food and Drug Administration, HHS.
ACTION: Notice; request for information and comments.
SUMMARY: The Food and Drug Administration (FDA or Agency), Center for Biologics Evaluation and Research (CBER) is requesting information from stakeholders regarding critical scientific

challenges and opportunities to advance the development of individualized cellular and gene therapies (CGTs). FDA intends to gather information and comments submitted in response to this request for information (RFI) to inform potential planning of future town halls, workshops, or discussion papers which could ultimately facilitate the development of additional regulatory science tools, standards, or guidance.

DATES: Either electronic or written comments on the notice must be submitted by November 20, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 20, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2023-N-3742 for "Scientific Challenges and Opportunities To Advance the Development of Individualized Cellular and Gene Therapies." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Karen Fikes, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

Personalized medicine has often been described as the use of individual characteristics, such as genetic markers or other measurable traits, to guide disease prevention or treatment among existing products (Ref. 1). An improved understanding of the molecular basis of disease along with the availability of sensitive diagnostic tools has led to the increasing opportunity to create individualized products based upon such genetic markers or measurable traits. These individualized therapies can now be developed for a single patient (or a very small number of patients) based on designing or engineering a product that specifically targets the mechanism underlying a patient's (or small number of patients') illness (Ref. 2). The opportunities and challenges associated with individualized therapies span the entire development pathway; from robust and consistent manufacturing with assurance of product quality, to nonclinical models and tools to characterize safety and activity, to the generation, collection, and assessment of clinical evidence from an individual patient (or a very small number of patients) (Refs. 3 and 4). For the purposes of this RFI, these types of products will be referred to as individualized CGTs. Examples of these emerging areas of research include:

- Products designed for the same indication with the same mode of action. For instance, a personalized vaccine for pancreatic cancer that consists of autologous dendritic cells pulsed with patient-specific neoantigen peptides (Ref. 5).
- Products designed for different indications with different modes of action. For instance, two gene therapy vector products for separate rare genetic neurological diseases, where both products utilize the same vector backbone but contain different transgene inserts.

This RFI is specifically seeking input on the scientific challenges and opportunities for individualized CGTs. The outcomes of this RFI are meant to complement other ongoing and planned CBER town halls, workshops, and discussion papers designed to educate and seek feedback on a broad range of considerations for the development of

CGTs (Ref. 6). The purpose of this RFI is limited to planning purposes only and should not be construed as a policy, a solicitation for applications, or an obligation on the part of the government to provide support for any ideas identified in response to it.

II. Request for Information and Comments

FDA is requesting information regarding major scientific challenges and opportunities to advance the development of individualized CGTs, with a specific focus on the areas outlined below, including manufacturing (*e.g.*, product quality), nonclinical development (*e.g.*, toxicology, proof of concept, biodistribution), clinical development (*e.g.*, assessing safety and efficacy), and additional questions to consider (*e.g.*, additional scientific needs, best practices, opportunities for collaborations).

A. Manufacturing

All CGTs, including individualized CGTs, need to be manufactured with sufficient quality, purity, and potency to ensure that each batch of the product has adequate safety and full potential to achieve the intended therapeutic outcome. In the case of CGTs for rare diseases, where a single batch of product may be sufficient to treat a small number of patients diagnosed with the rare disease, it can be challenging to develop a consistent manufacturing process and robust control strategy for future batches of the product for additional patients diagnosed with the same rare disease.

Additionally, the manufacturing of some individualized CGTs may need to be tailored to each patient, leading to high variability among each batch of the individualized product. For example, autologous CAR-T cell products are derived from a patient's own cells, and variability in this starting material leads to variability in the drug product. It can be challenging to understand and control the impact of this variability on the safety and efficacy of the product. As additional examples, a tumor neoantigen vaccine may be based on the genetic sequence of the individual patient's tumor, and some genome editing products may be customized to treat the individual patient's genetic mutation. The tailored manufacturing processes needed for these types of products can be difficult to standardize and can also result in significant variability among batches.

- Given the challenges to develop consistent manufacturing strategies for CGTs designed for a very small number

of patients or an individual patient, how can manufacturers leverage their prior experience manufacturing one CGT to support subsequent development and approval of another related, but distinct CGT (potential areas for leveraging may include manufacturing process validation, control strategy, assay validation, and drug product stability studies)?

- When the batch size of a CGT is very small, what are some challenges and solutions regarding the volume of product (or number of vials) needed for batch release testing, stability testing, retention of reserve samples, and comparability studies?

- What are some challenges and solutions for individualized CGTs that need to be tested and released rapidly, either because the product has a very short shelf life or because the patient's clinical status may be rapidly declining and treatment is urgently needed?

- For many individualized CGT products, each batch is tailored to an individual patient (*e.g.*, autologous CAR-T cells, tumor neoantigen vaccines, certain genome editing products). For such products, what are some challenges and solutions for assuring that each batch has adequate potency to achieve the intended therapeutic effect?

- What are some challenges and solutions for individualized genome editing products that aim to treat monogenic diseases for which the target gene has different mutations in different patients?

B. Nonclinical Development

There are several challenges in translating nonclinical data to humans for individualized CGTs. Because the final investigational product is unique to an individual or a small number of subjects, it often is not possible to evaluate the final clinical product in nonclinical studies. Additionally, many individualized CGTs target antigens that are human-specific and thus lack relevant animal models to inform safety and activity. An example includes T-Cell receptor-engineered T cells that target a patient-specific neoantigen, or a shared target in the context of an HLA allele specific to a small group of human subjects. There are also opportunities and challenges to utilizing prior knowledge from nonclinical studies of other approved or investigational individualized CGTs that may be leveraged for a related product under development for different populations or indications. An example includes two or more gene therapy vector products for different rare genetic diseases that utilize the same vector

backbone while containing different transgene inserts.

With continued scientific advances in the CGT field, it is also important to consider the use of computational approaches to support nonclinical evaluation of individualized CGTs. Computational approaches may present an opportunity to quickly and efficiently screen product safety or activity, but may pose additional challenges in their consistent use and validation.

- What nonclinical studies could be leveraged in support of a related product using similar technologies? What nonclinical studies are important to conduct with each final clinical product?

- What nonclinical development approaches could be considered when there are no relevant animal models or animal models are unable to replicate each individual disease/condition?

- For patient-specific products where evaluating each individual product is infeasible or impractical, what is the role for nonclinical studies conducted with representative product(s)?

- What are the opportunities and challenges with using computational approaches to support nonclinical development?

C. Clinical Development

Assessing efficacy can be a particular challenge in clinical studies of individualized CGTs, particularly for rare diseases with heterogeneous presentations. Randomized controlled designs are desired for interpretability of results, but may be unfeasible or unethical for various reasons in rare disease clinical trials. However, natural history data may be limited and/or lack suitability to support outcome assessments. Additional specific challenges in individuals or small groups include development and interpretation of novel endpoints, limitations in statistical analyses to understand treatment effects, and determining appropriate study design and duration to assess clinically meaningful benefit. An example may be a newly identified specific genetic mutation associated with a unique phenotypic presentation of disease, where only a few individuals with the specific mutation have been identified, and the natural history of disease is poorly understood. Adaptive, Bayesian, and other trial designs may provide different opportunities or challenges, and the approach will likely need to be considered on a case-by-case basis.

Understanding clinical safety of individualized CGTs may also be difficult and may depend on relevant

available data for similar products or other treatments for the disorder or similar disorders.

- What are challenges and strategies/opportunities with interpreting efficacy data from individual patients (including expanded access) and small groups of patients? What opportunities are there in leveraging prior and/or collective experiences?
- What strategies can be utilized to accumulate and interpret safety data in personalized/individualized CGTs?
- For genetic disorders with clear genotype-phenotype associations for disease manifestations or severity, what opportunities are there for tailoring treatments and study design to specific genotypes/phenotypes?

D. Additional Questions To Consider

- What additional major scientific challenges to advance the development of individualized CGTs should be considered?
- What existing best practices or scientific approaches should be leveraged to address any of these challenges? Are there specific opportunities for collaborations to advance the development of individualized CGTs?
- Are there specific areas where flexibility in regulatory approaches would improve the feasibility of developing and commercializing individualized CGTs?

III. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. President's Council of Advisors on Science and Technology, "Priorities for Personalized Medicine," September 2008.
2. FDA, "Focus Area: Individualized Therapeutics and Precision Medicine," 2022. Available at <https://www.fda.gov/science-research/focus-areas-regulatory-science-report/focus-area-individualized-therapeutics-and-precision-medicine>.
3. Marks, P. and C. Witten, "Toward a New Framework for the Development of Individualized Therapies," *Gene Therapy*, 28:615–617, 2021.
4. FDA, "Facilitating End-to-End Development of Individualized Therapeutics" (Public Workshop) (March 3, 2020). Available at <https://>

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5. Fritah, H., R. Rovelli, C.L. Chiang, and C.L. Kandalaf, "The Current Clinical Landscape of Personalized Cancer Vaccines," *Cancer Treatment Reviews*, 106:102383, 2022.
6. FDA, "OTP Events, Meetings, and Workshop," (2023). Available at <https://www.fda.gov/news-events/otp-events-meetings-and-workshops>.

Dated: September 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20452 Filed 9–20–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–3550]

Considerations for the Conduct of Clinical Trials of Medical Products During Major Disruptions Due to Disasters and Public Health Emergencies; Guidance for Industry, Investigators, and Institutional Review Boards; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled "Considerations for the Conduct of Clinical Trials of Medical Products During Major Disruptions Due to Disasters and Public Health Emergencies." This guidance recommends approaches that sponsors of clinical trials of medical products can consider when there is a major disruption to clinical trial conduct and operations due to disasters or public health emergencies, which can include but are not limited to hurricanes, earthquakes, military conflicts, infectious disease outbreaks, or bioterrorist attacks. The appendix to this guidance further explains those approaches by providing answers to questions that the Agency has received about conducting clinical trials during major disruptions.

DATES: The announcement of the guidance is published in the **Federal Register** on September 21, 2023.

ADDRESSES: You may submit either electronic or written comments on

Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2023–D–3550 for "Considerations for the Conduct of Clinical Trials of Medical Products During Major Disruptions Due to Disasters and Public Health Emergencies." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring,

MD 20993, 301 796-2500, CDEROMP@fda.hhs.gov; Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911; or Soma Kalb, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993-0002, 301-796-6359.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry, investigators, and institutional review boards entitled "Considerations for the Conduct of Clinical Trials of Medical Products During Major Disruptions Due to Disasters and Public Health Emergencies." Disasters and public health emergencies (PHEs) have the potential to cause major disruptions in the conduct of clinical trials for medical products. Such events can include, but are not limited to, weather events, military conflicts, infectious disease outbreaks, and bioterrorist attacks. The purpose of the guidance is to provide general considerations to assist sponsors, investigators, and institutional review boards in assuring the safety of trial participants, maintaining compliance with good clinical practice, and minimizing risks to trial integrity during disasters and PHEs that may lead to major disruption of clinical trial conduct and operations. The appendix to the guidance further explains these general considerations in a question-and-answer format.

FDA recognizes that disasters and PHEs can cause major disruptions to the conduct of clinical trials of medical products. For example, disasters or PHEs can lead to population quarantines, trial site closures, travel limitations, interruptions to the supply chain for the investigational product, or other considerations related to the type of disaster or emergency. These challenges can create difficulties for complying with protocol-specified procedures, including administering or using the investigational product or adhering to protocol-specific visits and laboratory/diagnostic testing. This final guidance provides recommendations on how to manage major disruptions to clinical trials during disasters and PHEs to help ensure the protection of participants and the ability of clinical trials to generate evidence to support regulatory decision-making during these times.

The final guidance provides recommendations for helping to address those challenges, including, among other things, recommendations related

to the safety of trial participants, whether to continue or suspend a trial, protocol amendments and deviations, study monitoring, alternative delivery of the investigational product, remote safety and endpoint assessment, informed consent, and reporting of adverse events. Some of the recommendations in this final guidance provide less burdensome approaches that can be utilized, when appropriate, in the conduct of clinical trials during major disruptions due to a disaster or PHE and that are consistent with public health. For example, the guidance provides recommendations regarding a change to virtual, rather than in-person, clinical trial visits when necessary.

In March 2020, FDA first published the guidance for industry entitled "Conduct of Clinical Trials of Medical Products During the COVID-19 Public Health Emergency" (COVID-19 Conduct guidance) to support public health efforts following a declaration, under section 319 of the Public Health Service (PHS) Act (42 U.S.C. 247d), by the Secretary of Health and Human Services of a public health emergency related to Coronavirus Disease 2019 (the disease caused by SARS-CoV-2). The COVID-19 Conduct guidance focused on addressing the COVID-19 PHE.

In the **Federal Register** of March 13, 2023 (88 FR 15417), FDA listed the COVID-19-related guidance documents that would no longer be effective after the PHE declared under the PHS Act expired on May 11, 2023. The March 13, 2023, notice also listed COVID-19-related guidance documents that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration to provide a period for stakeholder transition and then would no longer be in effect, and documents that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration, during which time FDA planned to further revise the guidances with any appropriate changes based on comments received and the Agency's experience with implementation. The COVID-19 Conduct guidance was included in the latter category and was revised to remain in effect for 180 days post-expiration of the PHE declaration. FDA believes that most of the recommendations set forth in the COVID-19 Conduct guidance are applicable outside the context of the COVID-19 PHE to major disruptions to clinical trial conduct in the setting of disasters and PHEs more broadly. Consistent with what we said in the **Federal Register** of March 13, 2023, FDA is therefore issuing this revised final guidance, which supersedes the

COVID-19 Conduct guidance. FDA's revisions include broadening the guidance's scope to apply during disasters and PHEs, removing several outdated questions, clarifying recommendations regarding use of risk-based approaches for monitoring clinical investigations, clarifying recommendations concerning charging for investigational products, and making other editorial changes to improve clarity and consistency.

FDA is issuing this guidance for immediate implementation in accordance with our good guidance practices regulation (21 CFR 10.115(g)(3)) without initially seeking prior comment because the Agency has determined that prior public participation is not feasible or appropriate (see 21 CFR 10.115(g)(2) and section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i))). Specifically, we are not seeking prior comment because disasters and PHEs may occur without notice and, as we have learned from experience during the COVID-19 PHE, may rapidly cause major disruptions to clinical trial conduct. It is thus important to public health to provide guidance on approaches to assure the safety of trial participants and minimize risks to trial integrity during such major disruptions. Moreover, portions of the guidance reflect a less burdensome approach that is consistent with public health and that can be used during a disaster or PHE when appropriate. Interested parties had an opportunity to comment on the recommendations in the COVID-19 Conduct guidance, and FDA considered those comments when revising the guidance to apply those recommendations to disasters and public health emergencies more broadly. Although this guidance document is being implemented immediately, it remains subject to comment in accordance with FDA's good guidance practices regulation (§ 10.115(g)(3)(D)).

The guidance represents the current thinking of FDA on "Considerations for the Conduct of Clinical Trials of Medical Products During Major Disruptions Due to Disasters and Public Health Emergencies." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved

collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 320 have been approved under OMB control number 0910–0630; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: September 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20474 Filed 9–20–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Engineered T Cell Therapies for the Treatment of HPV-Positive Cancer(s)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION**

section of this Notice to Scarlet TCR, Inc. ("Scarlet"), presently headquartered in Kingston, New Jersey.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before October 6, 2023 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240) 276–5484; Email: andy.burke@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. United States Provisional Patent Application No. 62/004,335 filed May 29, 2014, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–US–01];

2. PCT Patent Application No. PCT/US2015/033129 filed May 29, 2015, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–PCT–02];

3. Australian Patent No. 2015266818 issued January 16, 2020, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–AU–03];

4. Brazilian Patent Application No. BR112016027805–4 effective filing date of May 29, 2015, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–BR–04];

5. Canadian Patent Application No. 2,950,192 effective filing date of May 29, 2015, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–CA–05];

6. Chinese Patent No. ZL201580031789.X issued May 4, 2021, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–CN–06];

7. European Patent No. 3149031 issued December 18, 2019, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–EP–07];

a. Validated in: AL, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, LT, LU, LV, MK, MT, NL, NO, PL, PT, RO, SE, SI, SK, SM and TR.

8. Israeli Patent No. 248797 issued September 1, 2021, entitled "Anti-Human Papillomavirus 16 E7 T Cell Receptors" [HHS Reference No. E–176–2014–0–IL–08];

9. Japanese Patent No. 6742991 issued August 19, 2020, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-JP-09];

10. Korean Patent No. 10-2445667 issued September 16, 2022, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-KR-10];

11. Mexican Patent No. 375379 issued September 25, 2020, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-MX-11];

12. Saudi Arabian Patent No. 7456 issued January 5, 2021, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-SA-12];

13. United States Patent No. 10,174,098 issued January 8, 2019, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-US-13];

14. Hong Kong Patent No. HK1236203 issued January 8, 2021, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-HK-14];

15. United States Patent No. 10,870,687 issued December 22, 2020, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-US-15];

16. European Patent Application No. 19217074.4 filed December 17, 2019, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-EP-16];

17. Australian Patent No. 2019283892 issued May 13, 2021, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-AU-17];

18. Japanese Patent No. 6997267 issued December 20, 2021, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-JP-53];

19. Saudi Arabian Patent Application No. 520412601 filed August 10, 2020, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-SA-54];

20. Hong Kong Patent Application No. 42020020661.3 filed November 24, 2020, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-HK-55];

21. Mexican Patent Application No. MX/a/2020/010035 filed September 24, 2020, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-MX-56];

22. United States Patent No. 11,434,272 issued September 6, 2020,

entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-US-57];

23. Australian Patent No. 2021202227 issued February 23, 2023, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-AU-58];

24. Chinese Patent Application No. 20210399056.9 filed April 14, 2021, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-CN-59];

25. Israeli Patent No. 282518 issued July 2, 2022, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-IL-60];

26. Hong Kong Patent Application No. 42022046605.6 filed January 19, 2022, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-HK-62];

27. Japanese Patent No. 7291196 issued June 6, 2023, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-JP-63];

28. Israeli Patent Application No. 290655 filed February 16, 2022, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-IL-64];

29. United States Patent Application No. 17/816,496 filed August 1, 2022, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-US-65];

30. Korean Patent Application No. 2022-7032043 filed September 15, 2022, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-KR-66];

31. Australian Patent Application No. 2023200608 filed February 6, 2023, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-AU-01]; and

32. Japanese Patent Application No. 2023-091878 filed June 2, 2023, entitled “Anti-Human Papillomavirus 16 E7 T Cell Receptors” [HHS Reference No. E-176-2014-0-JP-01].

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

“Development, manufacture and commercialization of autologous T cell therapy products that are genetically engineered to have stable expression of a T cell receptor (TCR) targeting human papillomavirus (“HPV”)–16 E7, as claimed in the Licensed Patent Rights, for the treatment of HPV-associated

cancers and premalignant conditions in humans.”

The E-176-2014 patent family is primarily directed to an isolated TCR reactive to HPV 16 E7 antigen in the context of HLA-A*02. HPV describes a group of human viruses known to cause malignancy. Of the group, HPV-16 is the most prevalent strain. Approximately 90% of adults are estimated to have been exposed at some point in their lifetime. HPV drives transformation of infected cells through the expression of certain oncoproteins, chiefly E5, E6 and E7. The latter two are constitutively expressed in malignant cells and are necessary to maintain a transformed state, rendering them useful therapeutic targets.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 18, 2023.

Richard U. Rodriguez,
Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2023-20487 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of Institutional Training Grants (T32) in Digestive Diseases and Nutrition.

Date: October 17, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tori Stone, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 827-0994, tori.stone@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 15, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20438 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and

performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: October 17, 2023.

Time: 2:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Virtual Meeting).

Date: October 23-24, 2023.

Time: October 23, 2023, 8:30 a.m. to 9:00 p.m.; October 24, 2023, 9:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: The Bethesda Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland 20814 (Hybrid Meeting).

Contact Person: Jeffrey S. Diamond, Ph.D., Scientific Director, c/o Caren Collins, National Institute of Neurological Disorders and Stroke, NIH, Building 35, Room GF-149, Bethesda, MD 20892, 301-435-1896, diamondj@ninds.nih.gov; collinsca@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 15, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20420 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIHA175N93023R00003: Pre-clinical Models of Infectious Diseases—Task Area B.

Date: October 20-23, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240-627-3390, aabbey@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20493 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Human Liver and Human Liver Cells Research Resource.

Date: November 17, 2023.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707

Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, Suite 7000A, 6707 Democracy Boulevard, (301) 594-7637, davila-bloomm@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 15, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20436 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Transition to Independence Study Section (I).

Date: October 18-19, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Delia Tang, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850, 240-276-6456, tangd@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP-E.

Date: November 9, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review, Branch Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850, 240-276-6611, mukesh.kumar3@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20489 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; AD Data Platform.

Date: November 3, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C-

212, Bethesda, MD 20892, 301-402-7700, rv23r@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 15, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20435 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Initial Review Group, Mentored Patient-Oriented Research Study Section, October 26, 2023, 10:00 a.m. to October 27, 2023, 6 p.m., National Institutes of Health, Rockledge 1, 6705 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 14, 2023, FR Doc 2023-19907, 88 FR 63115.

The National Heart, Lung, and Blood Institute Initial Review Group, Mentored Patient-Oriented Research Study Section meeting is being amended due to a change of the meeting time formats. The meeting will be held on October 26, 2023, from 9:00 a.m. to October 27, 6:00 p.m. This meeting will be a video assisted meeting, and closed to the public.

Dated: September 18, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20491 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 27, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mairi Noverr, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13A, Rockville, MD 20852, (240) 747-7530, mairi.noverr@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 15, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20421 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing and Collaboration

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention described below presents an advancement concerning osteoclast fusion; osteoclasts are responsible for human skeletal remodeling and their dysfunction is a key factor for both rare and common bone diseases. The invention covers methods for modulating osteoclast fusion and bone resorption through the Lupus autoantigen (La) protein. The Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), National Institutes of Health, has conducted conceptual *in-vitro* studies and is now seeking potential licensees and

collaborators for further development and advancement.

ADDRESSES: Inquiries relating to this licensing and collaboration opportunity should be directed to: Heather Gunas, JD, MPH, Senior Technology Transfer Manager, National Cancer Institute (NCI) Technology Transfer Center, 9609 Medical Center Drive, Room 1E446, Rockville, MD 20850 (*for overnight mail*) or Bethesda, MD 20892 (*for regular mail*), Telephone: (240) 276-5530; Facsimile: (240) 276-5504; Email: gunash@mail.nih.gov. A Confidential Disclosure Agreement will be required to receive copies of unpublished information regarding this invention.

SUPPLEMENTARY INFORMATION: The following and all continuing U.S. and foreign patents/patent applications thereof are available for licensing: PCT Application No. PCT/US22/018639, filed March 3, 2022, and entitled “La protein as a novel regulator of osteoclastogenesis.” The Lupus autoantigen (La) protein is a master regulator of osteoclasts. The technology involves a novel mechanism for precise regulation of osteoclastogenesis through the manipulation of surface La protein. The ability of osteoclasts to remodel bone can be modulated by: (1) administering an effective amount of La protein or (2) administering an agent that modulates La protein expression or activity. Current solutions for bone diseases are usually broad-spectrum treatments that either coat the skeletal system or inhibit osteoclast development and these approaches can result in off-target side effects. This technology’s approach to regulating osteoclast fusion and osteoclastogenesis by targeting the La protein should bypass many side effects. The technology has been supported by conceptual *in-vitro* data and lead optimization is ongoing; further research and development are required to advance it towards disease-specific preclinical and clinical stages.

Potential Commercial Application: Treatment of common and rare bone diseases, including osteoporosis, Paget’s disease of bone, fibrous dysplasia, rheumatoid arthritis, osteopetrosis, osteomyelitis, or metastatic bone disease.

Development Stage: *In-vitro* study completed and lead optimization ongoing.

Dated: September 18, 2023.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2023-20479 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social and Environmental Determinants of Health Study Section.

Date: October 18–19, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ananya Paria, DHSC, MPH, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007H, Bethesda, MD 20892, (301) 827-6513, pariaa@mail.nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive and Nutrient Physiology and Diseases Study Section.

Date: October 19–20, 2023.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aster Juan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301-435-5000, juana2@mail.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Human Studies of Diabetes and Obesity Study Section.

Date: October 19–20, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge

Drive, Room 6164, Bethesda, MD 20892, (301) 435-1044, chenhui@csr.nih.gov.
(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 15, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20437 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; K99-U24-R13 SEP.

Date: November 3, 2023.

Time: 2:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402-8823, wheelansj@nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel SEP-1 K99 HG013541-01 Member Conflict.

Date: November 3, 2023.

Time: 6:15 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review

Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402-8823, wheelansj@nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Diversity Centers.

Date: November 16, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402-8739, pozzattr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 18, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20490 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Study Section.

Date: November 16-17, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Canopy by Hilton, Washington, DC, Bethesda North, 940 Rose Avenue, North Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and

Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205-H, Bethesda, MD 20892, (301) 827-7969, Pintuccig@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 18, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20492 Filed 9-20-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on November 16, 2023. The topic for this meeting will be "The Application of Digital Health Technology to Type 2 Diabetes Management: Current Status, Research Gaps, and Opportunities". The meeting is open to the public.

DATES: The meeting will be held on November 16, 2023 from 12:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The meeting will be held via the Zoom online video conferencing platform. For details, and to register, please contact dmicc@mail.nih.gov.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, which will be posted when available, see the DMICC website, www.diabetescommittee.gov, or contact Dr. William Cefalu, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Democracy 2, Room 6037, Bethesda, MD 20892, telephone: 301-435-1011; email: dmicc@mail.nih.gov.

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S. Code 285c-3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related

activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The November 16, 2023 DMICC meeting will focus on “The Application of Digital Health Technology to Type 2 Diabetes Management: Current Status, Research Gaps, and Opportunities.”

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC website, www.diabetescommittee.gov.

William T. Cefalu,

Director, Division of Diabetes, Endocrinology, and Metabolic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, and Metabolic Diseases, National Institutes of Health.

[FR Doc. 2023–20390 Filed 9–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration,

Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is proposing to provide one-year supplemental funding in FY 2023 to three Hawaii grant programs to support Maui residents in the aftermath of the Maui wildfires. The Hawaii State Department of Health, the recipient for Certified Community Behavioral Health Clinics Planning, Development, and Implementation (CCBHC–PDI), Grants for Expansion and Sustainability of the Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbances Program (CMHI), and Community Mental Health Services Block Grant (MHBG) will be offered a total of \$2,765,556 in supplemental funding since they are the only recipient providing or able to provide services to Maui residents.

FOR FURTHER INFORMATION CONTACT: Tison Thomas, Deputy Director, Center for Mental Health Services/SAMHSA, Tison.thomas@samhsa.hhs.gov; 202–853–5282.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2022 Certified Community Behavioral Health Clinics Planning, Development, and Implementation Grants (CCBHC–PDI), SM–22–022; FY 2023 Community Mental Health Services Block Grant (MHBG); FY 2020 Grants for Expansion and Sustainability of the Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbances (CMHI).

Assistance Listing Number: 93.696—CCBHC–PDI; 93.104—CMHI; 93.958—MHBG.

Authority: CCBHC–PDI grants are authorized under Section 520A of the Public Health Services Act, as amended. CMHI grants are authorized under Sections 516–565 of the Public Health Services Act, as amended. MHBG grants are authorized under Section 1920 of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to the Hawaii State Department of Health as the grant recipient for the CCBHC–PDI, CMHI and MHBG programs. They are the only Hawaii funded recipient within these programs and are providing or able to provide services to Maui residents. This supplemental funding will be used to address the behavioral health needs of Maui residents in the

aftermath of the Maui wildfires. This is not a formal request for application. Assistance will only be provided to the Hawaii State Department of Health based on the receipt of a satisfactory application and associated budget.

Dated: September 15, 2023.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2023–20432 Filed 9–20–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0164]

National Boating Safety Advisory Committee; October 17, 2023 Virtual Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee virtual meeting.

SUMMARY: The National Boating Safety Advisory Committee (Committee) and its Subcommittees will meet virtually to discuss matters relating to national boating safety. The virtual meeting will be open to the public.

DATES:

Meeting: The Committee and its Subcommittees will meet on Tuesday, October 17, 2023, from noon until 4 p.m. Eastern Standard Time (EST). This virtual meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the virtual meeting, submit your written comments no later than October 11, 2023.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EST on October 16, 2023. The number of virtual lines are limited and will be available on a first-come, first-served basis.

Pre-registration information: Pre-registration is required for attending this virtual meeting. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

The National Boating Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due

to a disability to fully participate, please email Mr. Jeff Decker at NBSAC@uscg.mil or call 202-372-1507 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the virtual meeting as time permits, but if you want Committee members to review your comments before the meeting, please submit your comments no later than October 11, 2023. We are particularly interested in comments on the topics in the “Agenda” section below. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>.

To do so, go to <https://www.regulations.gov>, type USCG-2010-0164 in the search box and click “Search”. Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the individual in the **FOR FURTHER**

INFORMATION CONTACT section of this document for alternate instructions. You must include the docket number USCG-2010-0164. Comments received will be posted without alteration at <https://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of <https://www.regulations.gov>. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Decker, Alternate Designated Federal Officer of the National Boating Safety Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509, telephone 571-607-8235 or via email at NBSAC@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant the *Federal Advisory Committee Act* (Pub. L. 117-286, 5 U.S.C., ch. 10). The Committee was established on

December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018*, (Pub. L. 115-282, 132 Stat. 4192), and is codified in 46 U.S.C. 15105. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Boating Safety Advisory Committee provides advice and recommendations to the Secretary of Homeland Security via the Commandant of the United States Coast Guard on matters relating to national boating safety. This notice is issued under the authority of 46 U.S.C. 15109(a).

Agenda

The agenda for the National Boating Safety Advisory Committee meeting is as follows:

Agenda

- (1) Call to Order.
- (2) Roll call of Committee members and determination of quorum.
- (3) Opening Remarks.
- (4) Conflict of Interest Statement.
- (5) Receipt and discussion of the following reports from the Office of Auxiliary and Boating Safety:
 - a. National Recreational Boating Safety Survey
 - b. USCG Publication for Boaters
 - c. Grant Program Administration
 - d. Uniform Certificate of Titling Act for Vessels
 - e. Mechanically Propelled Personal Hydrofoils (EFOILS)
 - f. Hull Identification Numbers
 - g. Task Statements and Strategic Plan
 - (6) National Water Safety Action Plan.
 - (7) Whale Protection Rules.
 - (8) Life Jacket Harmonization.
 - (8) Decarbonization/Electrification.
 - (9) Human Factors Task Statement.
 - (10) Public Comment.
 - (11) Next meeting planning.
 - (12) Vote on Chair and Vice Chair.
 - (13) Adjournment of meeting.

A copy of all meeting documentation will be available at <https://homeport.uscg.mil/Lists/Content/DispForm.aspx?ID=75937&Source=/Lists/Content/DispForm.aspx?ID=75937>, no later than October 16, 2023.

Alternatively, you may contact Mr. Jeff Decker as noted in the **FOR FURTHER INFORMATION** section above.

There will be a public comment period from approximately 3:00 p.m. until 3:15 p.m. (EST). Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: September 15, 2023.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2023-20473 Filed 9-20-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2023-0587]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0018

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0018, Official Logbook; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 20, 2023.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2023-0587] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593-7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202-475-3528, or fax 202-372-8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995;

44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2023–0587], and must be received by November 20, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking

System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Official Logbook.

OMB Control Number: 1625–0018.

Summary: The Official Logbook contains information about the voyage, the vessel's crew, drills, watches, and operations conducted during the voyage. Official Logbook entries identify particulars of the voyage, including the name of the ship, official number, port of registry, tonnage, names and merchant mariner credential numbers of the master and crew, the nature of the voyage, and class of ship. In addition, it also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Official Logbooks, and miscellaneous entries.

Need: 46 U.S.C. 11301, 11302, 11303, and 11304 require applicable merchant vessels to maintain an Official Logbook. The Official Logbook contains information about the vessel, voyage, crew, and watch. Lack of these particulars would make it difficult for a seaman to verify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The Official Logbook serves as an official record of recordable events transpiring at sea such as births, deaths, marriages, disciplinary actions, etc. Absent the Official Logbook, there would be no official civil record of these events. The courts accept log entries as proof that the logged event occurred. If this information was not collected, the Coast Guard's commercial vessel safety program would be negatively impacted, as there would be no official record of U.S. merchant vessel voyages. Similarly, those seeking to prove that an event required to be logged occurred would not have an official record available.

Forms: CG–706B Official Logbook.

Respondents: Shipping companies.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains at 1,750 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 7, 2023.

Kathleen Claffie,
Chief, Office of Privacy Management, U.S.
Coast Guard.

[FR Doc. 2023–20401 Filed 9–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0589]

Availability of Coast Guard Data to the Public in Implementation of the Open Government Data Act and To Support Coast Guard Rulemaking

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of Coast Guard data to the public in implementation of the Open Government Data Act and in support of Coast Guard rulemaking. The Coast Guard anticipates that the online data and geospatial dashboard will empower the general public, affected entities, and other interested parties to engage more effectively in Coast Guard rulemakings. We encourage you to submit comments describing what additional resources or data would help you participate in Coast Guard rulemakings.

DATES: Comments must be submitted to the online docket via <https://www.regulations.gov> on or before January 19, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0589 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Evan Morris, Coast Guard Office Standards Evaluation and Development; telephone 571–608–6719, email Evan.Morris@uscg.mil.

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments on your data needs to participate more effectively in Coast Guard rulemakings. We will consider all submissions and may adjust our public facing resources to improve public participation in the rulemaking process based on your comments.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0589 in the search box and click “Search.” Next, look for this

document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Discussion

The Coast Guard Office of Standards Evaluation and Development (CG-REG) is endeavoring to provide to the public as much U.S. Coast Guard data as possible and practicable—resource permitting—in implementation of Title II within the Evidence-Based Policymaking Act of 2018, named the Open Government Data Act. The Open Government Data Act guides federal agencies to make data open by default, subject to certain provisions such as (i) risks and restrictions related to the disclosure of personally identifiable information and (ii) security considerations. This notice shares several U.S. Coast Guard websites where our data resources are available to the public.

The “Annual Vessel Statistics” page provides the public with access to the universe of commercial vessels the U.S. Coast Guard regulates. The statistics available at the time of this notice are for 2021 and 2022; future year statistics will be provided as available. This page also allows you to download a list of publicly available information of these vessels by the vessel's commercial service. On this page, we present the aggregated information. We have also analyzed this information and created a dashboard which help any user quickly understand the scale and change in vessel populations by routes, responsible districts, and classification. The web address for the “Annual Vessel Statistics” page is <https://dco.uscg.afpims.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations->

Standards-CG-5PS/Office-of-Standards-Evaluation-and-Development-CG-REG/Annual-Vessel-Statistics/2022-Annual-Vessel-Statistics/.

In addition, we have created an interactive geospatial dashboard on ArcGIS Pro that displays significant maritime incidents that involved the U.S. Coast Guard from 2012 to 2022. This dashboard defines a significant maritime incident as an incident that resulted in at least \$100,000 of property damage or an incident that resulted in three or more injuries or one fatality. This data comes from the Coast Guard's Marine Investigation Safety and Law Enforcement (MISLE) database. This information is displaying publicly available information from the Coast Guard's Port State Information eXchange system: <https://cgmix.uscg.mil/PSIX/Default.aspx>. The web address for the Significant Maritime Incident GIS Dashboard is <https://dco.uscg.afpims.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-Standards-CG-5PS/Office-of-Standards-Evaluation-and-Development-CG-REG/Annual-Vessel-Statistics/GIS/>.

This Significant Maritime Incident Dashboard is a visual aid which can help end users better understand specific aspects of the affected populations for the ongoing Coast Guard rulemakings that are on the Unified Agenda of Regulatory and Deregulatory Actions (<https://www.reginfo.gov>). The data may be useful for public participation in our current Unified Agenda regulatory actions, such as Claims Procedures Under the Oil Pollution Act of 1990 (Regulatory Identification Number: 1625-AA03), Marine Casualty Reporting on the Outer Continental Shelf (1625-AB99), Shipping Safety Fairways Along the Atlantic Coast (1625-AC57), Safety Management Systems for Domestic Passenger Vessels (1625-AC65), and Towing Vessel Firefighting Training (1625-AC64).

We encourage you to submit comments describing your data needs to participate more effectively in Coast Guard rulemaking. In particular, the U.S. Coast Guard requests responses to the following questions:

1. What data could the U.S. Coast Guard provide that would encourage your participation in rulemakings?
2. What data could the U.S. Coast Guard provide that would help your academic research to inform future rulemakings?
3. In addition to the Unified Agenda, how do you recommend the U.S. Coast

Guard publicize information about rulemaking activities?

Based on public comment, other factors, and available USCG resources, we may continue to expand the availability of U.S. Coast Guard data resources that may be useful for participating in the rulemaking process.

This notice is issued under authority of 44 U.S. Code 3506(b)(6).

T. Brown,

Office Chief, U.S. Coast Guard, Standards Evaluation and Development.

[FR Doc. 2023–20477 Filed 9–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6427–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2024

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates “Difficult Development Areas” (DDAs) and “Qualified Census Tracts” (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Internal Revenue Code (IRC) section 42. The United States Department of Housing and Urban Development (HUD) makes new DDA and QCT designations annually.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Public Finance and Regulatory Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW, Room 8216, Washington, DC 20410–6000; telephone number 202–402–5878, or send an email to Michael.K.Hollar@hud.gov. For specific legal questions pertaining to section 42, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; telephone number 202–317–4137. For questions about the “HUBZone” program, contact Lori Gillen, Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW, Suite 8800, Washington, DC 20416; telephone number 202–386–7382, or send an email to hubzone@sba.gov. (These are not toll-free

telephone numbers). Additional copies of this notice are available through HUD User at, toll-free, 800–245–2691 for a small fee to cover duplication and mailing costs. 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 Available Electronically: This notice and additional information about DDAs and QCTs, including the lists of DDAs and QCTs, are available electronically on the internet at <https://www.huduser.gov/portal/datasets/qct.html>.

SUPPLEMENTARY INFORMATION:

I. This Notice

Under IRC section 42(d)(5)(B)(iii)(I), for purposes of the LIHTC, the Secretary of HUD must designate DDAs, which are areas with high construction, land, and utility costs relative to area median gross income (AMGI). This notice designates DDAs for each of the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. HUD makes the designations of DDAs in this notice based on modified Fiscal Year (FY) 2023 Small Area Fair Market Rents (Small Area FMRs, SAFMRs), FY 2023 nonmetropolitan county FMRs, FY 2023 income limits, and 2020 Census population counts, as explained below.

Similarly, under IRC section 42(d)(5)(B)(ii)(I), the Secretary of HUD must designate QCTs, which are areas where either 50 percent or more of the households have an income less than 60 percent of the AMGI or have a poverty rate of at least 25 percent. This notice designates QCTs based on new income and poverty data released in the American Community Survey (ACS). Specifically, HUD relies on the most recent three sets of ACS data to ensure that anomalous estimates, due to sampling, do not affect the QCT status of tracts.

II. Data Used To Designate DDAs

HUD uses data from the 2020 Census on total population of metropolitan areas, metropolitan ZIP Code Tabulation Areas (ZCTAs),¹ and nonmetropolitan areas in the designation of DDAs. The

Office of Management and Budget (OMB) published updated metropolitan areas in OMB Bulletin No. 18–04 on September 14, 2018.^{2,3} FY 2023 FMRs and FY 2023 income limits HUD uses to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median family income levels) within MSAs. HUD calculates Small Area FMRs for the ZCTAs, or portions of ZCTAs within the metropolitan areas defined by OMB Bulletin No. 18–04.

III. Data HUD Uses To Designate QCTs

HUD uses data from the 2020 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of States in the designation of QCTs. The FY 2023 income limits HUD uses to designate QCTs are based on these MSA definitions with modifications to account for substantial differences in rental housing markets (and in some cases median family income levels) within MSAs. In this QCT designation, HUD uses the OMB metropolitan area definitions published in OMB Bulletin No. 18–04, without modification for purposes of evaluating how many census tracts can be designated under the population cap but uses the HUD-modified definitions and their associated area median family incomes for determining QCT eligibility.

Because the 2020 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 65,000 persons, such as census tracts. Due to sample-related anomalies in estimates from year to year, HUD utilizes three sets of ACS tabulations to ensure that anomalous estimates do not affect QCT status.

IV. Background

The U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of IRC section 42. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC section 42, a

summary of the section is provided below. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

V. Summary of the Low-Income Housing Tax Credit

A. Determining Eligibility

The LIHTC is a tax incentive intended to increase the availability of low-income rental housing. IRC section 42 provides an income tax credit to certain owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each State (credit ceiling) is limited by population. Section 42 allows each State a credit ceiling based on a statutory formula indicated at IRC section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be allocated to qualified States as additional credit. State and local housing agencies allocate the State's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC section 42 credits derived from the credit ceiling, States may also provide IRC section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided based on the use of tax-exempt bond proceeds do not reduce the credits available from the credit ceiling. See IRC section 42(h)(4).

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. Prior to the enactment of the Consolidated Appropriations Act, 2018 (the 2018 Act), under IRC section 42(g), a building was required to meet one of two tests to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of AMGI, or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is "rent-restricted" if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (*i.e.*, 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds

¹ The 2024 SDDAs follow the 2010 ZCTA boundaries in order to remain consistent with the FY 2023 FMRs. The method HUD used to allocate population counts from the 2020 Census to these ZCTAs is described below.

² Available at: www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.

³ The OMB metropolitan area definitions released on March 6, 2020 (OMB Bulletin No. 20–01) will be used for the first time in the calculations of income limits in FY 2024 and thus used for QCT and DDA designations for the first time in the 2025 designations.

remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The 2018 Act added a third test, the average income test. *See* IRC section 42(g)(1), as amended by Public Law 115–141, Division T, section 103(a)(1) (March 23, 2018). A building meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project located in a high-cost housing area as described in IRC section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The taxpayer designates the imputed income limitation for each unit. The designated imputed income limitation of any unit is determined in 10-percentage-point increments, and may be designated as 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. The average of the imputed income limitations designated must not exceed 60 percent of AMGI. *See* IRC section 42(g)(1)(C).

B. Calculating the LIHTC

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the “qualified basis” for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The tax credit rates are determined monthly under procedures specified in IRC section 42 and cannot be less than 9 percent for new buildings that are not federally subsidized, and cannot be less than 4 percent for buildings that are federally subsidized. Individuals can use the credits up to a deduction equivalent of \$25,000 (the actual maximum amount of credit that an individual can claim depends on the individual’s marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building’s “applicable fraction” and its “eligible basis.” The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, or for credits awarded from the State’s per capita allocation, to buildings designated by the State agency, eligible basis may be increased up to 130 percent from what it would otherwise be. This means that the available credits also may be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent (70 percent $\times$ 130 percent).

C. Defining Difficult Development Areas (DDAs) and Qualified Census Tracts (QCTs)

As stated above, IRC section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas. *See* IRC section 42(d)(5)(B)(iii).

Similarly, IRC section 42 defines a QCT as an area designated by the Secretary of HUD where, for the most recent year for which census data are available on household income in such tract, either 50 percent or more of the households in the tract have an income which is less than 60 percent of the AMGI or the tract’s poverty rate is at least 25 percent. All designated QCTs in a single metropolitan area or nonmetropolitan area (taken together) may not contain more than 20 percent of the population of that metropolitan or nonmetropolitan area. Thus, unlike the restriction on DDA designations, QCTs are restricted by the total population of

each individual area as opposed to the aggregate population across all metropolitan areas and nonmetropolitan areas. *See* IRC section 42(d)(5)(B)(ii).

IRC section 42(d)(5)(B)(v) allows States to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This State discretion applies only to buildings allocated credits under the State housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies’ qualified allocation plans (QAPs). *See* IRC section 42(m).

VI. Explanation of HUD Designation Method

A. 2024 Difficult Development Areas

In developing the 2024 list of DDAs, as required by IRC section 42(d)(5)(B)(iii), HUD compared housing costs with incomes. HUD used 2020 Census population for ZCTAs, and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin 18–04 on September 14, 2018, with modifications, as described below. In keeping with past practice of basing the coming year’s DDA designations on data from the preceding year, the basis for these comparisons is the FY 2023 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and modified FMRs based on the FY 2023 FMRs used for the Housing Choice Voucher (HCV) program. For metropolitan DDAs, HUD used Small Area FMRs based on three annual releases of ACS data, to compensate for statistical anomalies which affect estimates for some ZCTAs. For non-metropolitan DDAs, HUD used the FY 2023 FMRs published on September 1, 2022 and effective on October 1, 2022 (87 FR 53761), as updated by the March 20, 2023 publication effective April 19, 2023 (88 FR 16647).

In formulating the FY 2023 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these “HUD Metro FMR Areas” (HMFAs) in cases where one or more of the parts of newly defined MSAs were previously in separate FMR areas. All counties added to metropolitan areas are treated as HMFAs with rents and incomes based on their own county data, where available. HUD no longer requires

recent-mover rents to differ by five percent or more in order to form a new HMFAs. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY 2023 FMR areas and FMRs are available at <https://www.huduser.gov/portal/datasets/fmr.html#2023>. Complete details on HUD's process for determining FY 2023 income limits are available at <https://www.huduser.gov/portal/datasets/il.html#2023>). HUD's FY 2023 FMRs and VLILs do not account for the change in Census county-equivalent areas in Connecticut from the eight historical counties to the States's nine planning regions.

HUD's unit of analysis for designating metropolitan DDAs consists of ZCTAs, whose Small Area FMRs are compared to metropolitan VLILs. For purposes of computing VLILs in metropolitan areas, HUD considers entire MSAs in cases where these were not broken up into HMFAs; and HMFAs within the MSAs that were broken up for such purposes. HUD used the 2010 ZCTA boundaries to designate the 2024 SDDAs in order to remain consistent with the FY 2023 Small Area FMRs. To allocate 2020 Census population to the 2010 ZCTA boundaries, HUD first translated the 2020 decennial Census population into 2010 census tract boundaries using the Census Bureau's 2010 to 2020 block relationship file and aggregating to 2010 census tracts. The tract populations were then allocated to ZCTAs using the proportion of each tract's 2010 population within each ZCTA, using the Census Bureau's 2010 ZCTA to 2010 Census Tract Relationship File.

Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the ZCTA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA designations follows:

1. *Calculate FMR-to-Income Ratios.* For each metropolitan ZCTA and each nonmetropolitan county, HUD calculated a ratio of housing costs to income. HUD used a modified FY 2023 two-bedroom Small Area FMR for ZCTAs, a modified FY 2023 two-bedroom FMR for non-metropolitan counties, and the FY 2023 four-person VLIL for this calculation.

The modified FY 2023 two-bedroom Small Area FMRs for ZCTAs differ from the FY 2023 Small Area FMRs in four ways. First, HUD did not limit the Small Area FMR to 150 percent of its

metropolitan area FMR. Second, HUD did not limit annual decreases in Small Area FMRs to ten percent, which was first applied in the FY 2018 FMR calculations. Third, HUD adjusted the Small Area FMRs in New York City using the New York City Housing and Vacancy Survey, which is conducted by the U.S. Census Bureau, to adjust for the effect of local rent control and stabilization regulations. No other jurisdictions have provided HUD with data that could be used to adjust Small Area FMRs for rent control or stabilization regulations.⁴ Finally, the Small Area FMRs are not limited to the State non-metropolitan minimum FMR.

The FY 2023 two-bedroom FMR for non-metropolitan counties was modified only by removing the State non-metropolitan minimum FMR.

The numerator of the ratio, representing the development cost of housing, was the area's FY 2023 FMR, or Small Area FMR in metropolitan areas. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom rental unit.

The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as $\frac{1}{12}$ of 30 percent of 120 percent of the area's 4-person VLIL (where the VLIL was rounded to the nearest \$50).

2. *Sort Areas by Ratio and Exclude Unsuitable Areas.* The ratios of the FMR, or Small Area FMR, to the LIHTC income-based rent limit were arrayed in descending order, separately, for ZCTAs and for nonmetropolitan counties. ZCTAs with populations less than 100 were excluded in order to avoid designating areas unsuitable for residential development, such as ZCTAs containing airports.

3. *Select Areas with Highest Ratios and Exclude QCTs.* The DDAs are those areas with the highest ratios that cumulatively comprise 20 percent of the 2020 population of all metropolitan areas and all nonmetropolitan areas. For purposes of applying this population cap, HUD excluded the population in areas designated as 2024 QCTs. Thus, an area can be designated as a QCT or DDA, but not both.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The

cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

B. Qualified Census Tracts

In developing the list of QCTs, HUD used 2020 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2015–2019, 2016–2020 and 2017–2021 ACS tabulations;⁵ the FY 2023

⁴ HUD encourages other jurisdictions with rent control laws that affect rents paid by recent movers into existing units to contact HUD about what data might be provided or collected to adjust Small Area FMRs in those jurisdictions.

⁵ The 2015–2019 ACS data were released using 2010 census tract boundaries, while the 2016–2020 and 2017–2021 ACS data use 2020 census tract boundaries. To reconcile these datasets, HUD used population-weighted averages of the median household income and poverty rate estimates from

Very Low-Income Limits (VLILs) computed at the HMFA level to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 18–04 on September 14, 2018, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY 2006 and thereafter, are established at the HMFA level. HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (IRC section 42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas.

HUD determined the QCTs as follows:

1. *Calculate 60 percent AMGI.* To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of AMGI or have a poverty rate of 25 percent or more. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 ACS 5-year tabulations for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY 2023 VLIL adjusted for inflation to match the ACS estimates, which are adjusted to the value of the dollar in the last year of the 5-year group.

2. *Determine Whether Census Tracts Have Less than 50 percent of Households Below 60 percent AMGI.* For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by: (a) calculating the average household size of the census tract, (b) adjusting the income standard to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years of ACS tabulations (2015–2019, 2016–2020 and 2017–

2021). HUD did not consider estimates of median household income to be statistically reliable unless the margin of error was less than half of the estimate (or a Margin of Error Ratio, MoER, of 50 percent or less). If at least two of the three estimates were not statistically reliable by this measure, HUD determined the tract to be ineligible under the income criterion due to lack of consistently reliable median income statistics across the three ACS tabulations. Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. *Estimate Poverty Rate.* For each census tract, HUD determined the poverty rate in each of the three releases of ACS tabulations (2015–2019, 2016–2020 and 2017–2021) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined. As with the evaluation of tracts under the income criterion, HUD applies a data quality standard for evaluating ACS poverty rate data in designating the 2024 QCTs. HUD did not consider estimates of the poverty rate to be statistically reliable unless both the population for whom poverty status has been determined and the number of persons below poverty had MoERs of less than 50 percent of the respective estimates. If at least two of the three poverty rate estimates were not statistically reliable, HUD determined the tract to be ineligible under the poverty rate criterion due to lack of reliable poverty statistics across the ACS tabulations.

4. *Designate QCTs Where 20 percent or Less of Population Resides in Eligible Census Tracts.* QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the population is in poverty in at least two of the three years evaluated, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. *Designate QCTs Where More than 20 percent of Population Resides in Eligible Census Tracts.* In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. The statistically reliable income and poverty criteria are each averaged over the three ACS tabulations (2015–2019, 2016–2020 and 2017–2021). Statistically reliable values that did not exceed the income and poverty rate thresholds were included in the average.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs for at least two of the three evaluation years; a different pair of years may be used to meet each criterion. The second group includes tracts that satisfy either the income criterion in at least two of the three years, or the poverty criterion in at least two of three years, but not both. A tract must qualify by at least one of the criteria in at least two of the three evaluation years to be eligible.

c. HUD ranked tracts in the first group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the first group from highest to lowest by the average of the poverty rates. HUD averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

d. HUD ranked tracts in the second group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the second group from highest to lowest by the average of the poverty rates. HUD then averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

e. HUD stacked the ranked first group on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

f. Working down the single, concatenated, ranked list of eligible tracts, HUD identified census tracts as designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If HUD does not designate a census tract because doing so would raise the percentage above 20 percent, HUD then considers subsequent eligible census tracts to determine whether one or more

the 2015–2019 ACS wherever a 2020 census tract intersected multiple 2010 census tracts. HUD did not consider these derived ACS estimates to be statistically reliable if any of the 2010 census tracts comprising more than 10 percent of the population of the 2020 census tract failed to meet the reliability standard (*i.e.*, had a margin of error greater than half of the estimate for the estimate in question).

eligible census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 18–04, defining metropolitan areas:

“OMB establishes and maintains the delineations of Metropolitan Statistical Areas, . . . solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the delineations[.] In cases where . . . an agency elects to use the Metropolitan . . . Area definitions in nonstatistical programs, it is the sponsoring agency’s responsibility to ensure that the delineations are appropriate for such use. An agency using the statistical delineations in a nonstatistical program may modify the delineations, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area delineations in order to avoid confusion.”

Following OMB guidance, HUD’s estimation procedure for the FMRs and income limits incorporates the September 2018 OMB definitions of metropolitan Core-Based Statistical Areas (CBSAs) based on the CBSA standards, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where counties were added to an existing or newly defined metropolitan area. In CBSAs where HUD establishes subareas, it is HUD’s view that the geographic extent of the housing markets is not the same as the geographic extent of the CBSAs.

In the New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HUD defines HMFA’s according to county subdivisions or minor civil divisions (MCDs), rather than county or county-equivalent boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

VII. Future Designations

HUD designates DDAs annually as updated HUD income limit and FMR data are made public. HUD designates QCTs annually as new income and poverty rate data are released.

A. Effective Date

The 2024 lists of QCTs and DDAs are effective:

(1) for allocations of credit after December 31, 2023; or

(2) for purposes of IRC section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2023.

If an area is not on a subsequent list of QCTs or DDAs, the 2024 lists are effective for the area if:

(1) the allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC section 42(h)(4), if:

(a) the bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A “complete application” means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a “multiphase project,” the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase was (were) placed in service, or (b) the bonds were issued.

For purposes of this notice, a “multiphase project” is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) the multiphase composition of the project (i.e., total number of buildings and phases in the project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that the applicant identifies the buildings in the

project for which credit is (or will be) sought;

(2) the aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) all applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary’s designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several States and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

B. Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose QCT or DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2024 DDA that is NOT a designated DDA in 2025 or 2026. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2024. Credits are allocated to Project A on October 30, 2026. Project A is eligible for the increase in basis accorded a project in a 2024 DDA because the application was filed BEFORE January 1, 2025 (the assumed effective date for the 2025 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete

application for an allocation of tax credits.

(Case B) Project B is located in a 2024 DDA that is NOT a designated DDA in 2025 or 2026. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2024. Credits are allocated to Project B on March 30, 2027. Project B is NOT eligible for the increase in basis accorded a project in a 2024 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2025 (the assumed effective date of the 2025 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2024 DDA that was not a DDA in 2023. Project C was placed in service on November 15, 2023. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2024. The tax-exempt bonds that will support the permanent financing of Project C are issued on September 30, 2024. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2024 DDA, because the project was placed in service BEFORE January 1, 2024.

(Case D) Project D is located in an area that is a DDA in 2024 but is NOT a DDA in 2025 or 2026. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2024. Tax-exempt bonds are issued for Project D on April 30, 2026, but Project D is not placed in service until January 30, 2027. Project D is eligible for the increase in basis available to projects located in 2024 DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the IRC (the two events being tax-exempt bonds issued and buildings placed in service) took place on April 30, 2026, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the tax-exempt bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2024 DDA that is NOT a designated DDA or QCT in 2025. The first phase of Project E received an allocation of credits in 2024, pursuant to an application filed March 15, 2024, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the

allocating agency by the same entity on March 15, 2025. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2025. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2024 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2024 DDA that is NOT a designated DDA in 2025 or 2026. The first phase of Project F received an allocation of credits in 2024, pursuant to an application filed March 15, 2024, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2026. Credits are allocated to the second phase of Project F on October 30, 2026. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2024 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

(Case G) Project G is located in an area that is NOT a DDA in 2024 or 2026, but is in a DDA in 2025. A complete application for tax-exempt bond financing for Project G is filed with the bond-issuing agency on October 30, 2024. Project G is placed in service on November 15, 2025 and the bonds are issued on February 20, 2026. Property G is eligible for the increase in basis available to projects located in 2025 DDAs because one of the two necessary actions (the two events being tax-exempt bonds issued and buildings placed in service) occur when the property is in a DDA and both events occur after January 1, 2025, the assumed effective date of the 2025 DDAs.

VIII. Findings and Certifications

A. Environmental Impact

This notice involves the statutorily required establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

B. Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the document preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under IRC section 42, as amended, for the use by political subdivisions of the States in allocating the LIHTC. This notice also details the technical methods used in making such designations. As a result, this notice is not subject to review under the order.

Solomon J. Greene,

Principal Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2023-20478 Filed 9-20-23; 8:45 am]

BILLING CODE 4210-67-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-685 and 731-TA-1599-1606 (Final)]

Tin Mill Products From Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom; Revised Schedule for the Subject Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: September 12, 2023.

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks (202-205-2058), 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 investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On September 1, 2023, the Commission established a schedule for the conduct of the final phase of the subject investigations (88 FR 60484, September 1, 2023). Subsequently, the Department of Commerce ("Commerce") extended the date for its final determination in the China investigation from October 30, 2023 to January 4, 2024 (88 FR 62542, September 12, 2023). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule. The final determinations for Canada, Germany, the Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom were previously extended (88 FR 57078, 88 FR 57081, 88 FR 57084, 88 FR 57087, 88 FR 57090, 88 FR 57093, 88 FR 57096, 88 FR 57099, August 22, 2023).

The Commission's revised dates in the schedule are as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than 5:15 p.m. on December 20, 2023; the prehearing conference will be held at the U.S. International Trade Commission Building on December 29, 2023, if deemed necessary; the prehearing staff report will be placed in the nonpublic record on December 11, 2023; the deadline for filing prehearing briefs is 5:15 p.m. on December 19, 2023; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on January 4, 2024; the deadline for filing posthearing briefs is 5:15 p.m. on January 11, 2024; the Commission will make its final release of information on January 31, 2024; and final party comments are due on 5:15 p.m. on February 2, 2024.

For further information concerning this proceeding, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 18, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–20497 Filed 9–20–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health Administration Conflict of Interest and Disclosure

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Conflict of Interest and Disclosure form will be used to determine whether or not a conflict of interest exists for a

potential peer review panel member. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 8, 2023 (88 FR 37581).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Occupational Safety and Health Administration Conflict of Interest and Disclosure.

OMB Control Number: 1218–0255.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 36.

Total Estimated Number of Responses: 36.

Total Estimated Annual Time Burden: 27 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–20509 Filed 9–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Construction Fall Protection Systems Criteria, Practices, and Training Requirements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Standards on Construction Fall Protection Systems Criteria and Practices (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503) ensure that employers provide the required fall protection for their workers. Accordingly, these standards have the following paperwork requirements: Paragraphs (c)(4)(ii) and (k) of 29 CFR 1926.502, which specify certification of safety nets and development of fall protection plans, respectively, and paragraph (b) of 29 CFR 1926.503, which requires employers to certify training records. The training certification requirement specified in paragraph (b) of 29 CFR 1926.503 documents the training provided to workers potentially exposed to fall hazards in construction. A competent person must train these workers to recognize fall hazards and in the use of procedures and equipment that minimize these hazards. An employer must verify compliance with this training requirement by preparing and maintaining a written certification record that contains the name or other identifier of the worker receiving the

training, the date(s) of the training, and the signature of the competent person who conducted the training, or of the employer. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 26, 2023 (88 FR 34186).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Construction Fall Protection Systems Criteria, Practices, and Training Requirements.

OMB Control Number: 1218–0197.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 406,714.

Total Estimated Number of Responses: 6,072,808.

Total Estimated Annual Time Burden: 506,903 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–20395 Filed 9–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0007]

Proposed Extension of Information Collection; Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce

paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection regarding Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report.

DATES: All comments must be received on or before November 20, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA–2023–0044.

- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor’s COVID–19 policy. Special health precautions may be required.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), Public Law 95–164 as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the

Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

The reporting and recordkeeping provisions in 30 CFR 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's statutory mandate to reduce work-related injuries and illnesses among the nation's miners (30 U.S.C. 801). Part 50 of 30 CFR applies to operators of coal, metal, and nonmetal mines. It requires operators to immediately notify MSHA of accidents, investigate accidents and restrict disturbance of accident-related areas. This part also requires operators to file reports with MSHA pertaining to accidents, occupational injuries, and occupational illnesses, as well as employment and coal production data. This part also requires operators to maintain copies of reports at mine offices.

30 CFR 50.2 defines operators as (1) any owner, lessee, or other person who operates, controls, or supervises a coal mine; or (2) the person, partnership, association, or corporation, or subsidiary of a corporation operating a metal or nonmetal mine, and owning the right to do so, and includes any agent thereof charged with responsibility for the operation of such mine.

1. Notification, Investigation, Preservation of Evidence

Section 103(j) of the Mine Act, 30 U.S.C. 813(j), requires operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence that would assist in the investigation into the causes of the accident. 30 CFR 50.10 requires mine operators and independent contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the cause of the accident.

Section 103(d) of the Mine Act, 30 U.S.C. 813(d), mandates that each accident must be investigated by the operator to determine the cause and means of preventing a recurrence. 30 CFR 50.11 requires the mine operator or independent contractor to investigate each accident and occupational injury and prepare a report. The mine operator or independent contractor may not use

MSHA Form 7000–1 as the investigation report, except if the operator or independent contractor employs fewer than 20 miners and the injury is not related to an accident.

2. Reporting of Accidents, Injuries, and Illnesses

30 CFR 50.20 requires mine operators and independent contractors to report each accident, injury, and illness to MSHA on MSHA Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry, with specific criteria and instructions defined in 30 CFR 50.20–2 through 50.20–7.

3. Quarterly Employment and Coal Production Report

30 CFR 50.30 requires that all mine operators and independent contractors working on mine property report employment to MSHA quarterly on MSHA Form 7000–2 within 15 days after the end of each calendar quarter. Each coal mine operators or independent contractor is also required to report coal production on MSHA Form 7000–2. 30 CFR 50.30–1 provides instructions for completing MSHA Form 7000–2.

4. Record Maintenance

Section 103(h) of the Mine Act, 30 U.S.C. 813(h), requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Operators must keep records of such accidents and investigations and make them available to the Secretary or the Secretary's authorized representative and the appropriate State agency. 30 CFR 50.40 requires each mine operator or independent contractor to maintain a copy of each investigation report prepared under section 50.11 or 50.20 or 50.30 at the mine office for five years.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the 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.

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 DOL–MSHA, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0007.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 20,953.

Frequency: On occasion.

Number of Annual Responses: 98,389.

Annual Burden Hours: 117,903 hours.

Annual Respondent or Recordkeeper Cost: \$3,009.

MSHA Forms: MSHA Form 7000–1, Mine Accident, Injury, and Illness

Report; MSHA Form 7000–2, Quarterly Mine Employment and Coal Production Report.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,
Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–20394 Filed 9–20–23; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TUV SUD America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for TUV SUD America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition for TUV SUD America, Inc. (TUVAM) as a NRTL. TUVAM’s expansion covers the addition of nine test sites to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL’s scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVAM, which details that NRTL’s scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

TUVAM submitted an application, dated January 24, 2021 (OSHA–2007–0043–0045), requesting the conversion of ten existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy)

published in the **Federal Register** on November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled “Second Revision to the Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination.” TUVAM amended their application on December 10, 2021 (OSHA–2007–0043–0046), to remove one site from the original request, leaving nine sites to be considered in the expansion request.

OSHA published the preliminary notice announcing TUVAM’s expansion application in the **Federal Register** on August 15, 2023 (88 FR 55478). The agency requested comments by August 30, 2023, but it received no comments in response to this notice. OSHA is now proceeding with this final grant of expansion of TUVAM’s NRTL recognition.

To obtain or review copies of all public documents pertaining to the TUVAM application, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2007–0043 contains all materials in the record concerning TUVAM’s recognition. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined TUVAM’s expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that TUVAM meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitations and condition. OSHA limits the expansion of TUVAM’s recognition to include the nine sites listed in Table 1, below. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

TABLE 1—LIST OF TEST SITES FOR INCLUSION IN TUVAM’S NRTL SCOPE OF RECOGNITION

TUVAM site name	Address	Country
Shenzhen	Building 6, 12 & 13, Zhiheng Wisdomeland Business Park, Nantou Checkpoint Road 2, 518052, Shenzhen, Guangdong Province.	China.
Gormley	11 Gordon Collins Drive, Gormley, Ontario L0H 1G0	Canada.

TABLE 1—LIST OF TEST SITES FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION—Continued

TUVAM site name	Address	Country
Fareham	Octagon House, Concorde Way, Segensworth North, Fareham, Hampshire, PO15 5RL.	United Kingdom.
Seoul	10, Gukjegumyung-ro, Yeongdeungpo-gu, Seoul	Korea.
Tampa	5610 West Sligh Avenue, Suite 100, Tampa, Florida	United States.
Tokyo	Sumitmo Fudosan, Nishi-shinjuku Bldg. No 4 8F 4-33-4, Nishi-Shinjuku, Sjinjuku-ku, Tokyo, 160-0023.	Japan.
Taipei	7F, No 37, Section 2, Zhongyang, South Road, Beitou District, 11270 Taipei City.	Taiwan.
Singapore	No. 15 International Business Park 609937	Singapore.
Guangzhou	5F/8F (East), Communication Building, 163 Pingyun Road, Huangpu Avenue West Guangzhou, 510656, Guangdong Province.	China.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, TUVAM must abide by the following conditions of the recognition:

1. TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. TUVAM must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVAM must continue to meet the requirements for recognition, including all previously published conditions on TUVAM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVAM as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023-20404 Filed 9-20-23; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0042]

TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for TUV Rheinland of North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.frankis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA), as a NRTL. TUVRNA's expansion covers the addition of four test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR

1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

TUVRNA submitted an application, dated June 3, 2021 (OSHA-2007-0042-0068), to expand recognition as a NRTL to include four additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing TUVRNA's expansion application in the **Federal Register** on August 15, 2023 (88 FR 55482). The agency requested comments by August 30, 2023, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to grant expansion to TUVRNA's scope of recognition.

To review copies of all public documents pertaining to TUVRNA's application, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor at (202) 693–2350. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUVRNA's recognition. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY number (877) 889–5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined TUVRNA's expansion application, their capability to meet the requirements of the test standard, and other pertinent information. Based on its review of this evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVRNA's scope of recognition. OSHA limits the expansion of TUVRNA's recognition to testing and certification of products for demonstration of conformance to the test standards shown below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 355	Cord Reels.
UL 498A	Current Taps and Adapters.
UL 1977	Component Connectors for Use in Data, Signal, Control and Power Applications.
UL 2438	Outdoor Seasonal-Use Cord-Connected Wiring Devices.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such

testing and certification, a NRTL's scope of recognition does not include these products.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including but not limited to, abiding by the following conditions of recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. TUVRNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVRNA as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.
James S. Frederick,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.
[FR Doc. 2023–20405 Filed 9–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for Intertek Testing Services NA, Inc., as a

Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:
Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.
General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Intertek Testing Services NA, Inc. (ITSNA) as a NRTL. ITSNA's expansion covers the addition of 23 test sites to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that

scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpcanrtl/index.html>.

ITSNA submitted an application, dated January 25, 2021 (OSHA–2007–0039–0047), requesting the conversion of 23 existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy) published in the **Federal Register** on November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled “Second Revision to the

Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination.” OSHA published the preliminary notice announcing ITSNA's expansion application in the **Federal Register** on August 15, 2023 (88 FR 55476). The agency requested comments by August 30, 2023, but it received no comments in response to this notice. OSHA is now proceeding with this final grant of expansion of ITSNA's NRTL recognition.¹

To obtain or review copies of all public documents pertaining to the ITSNA application, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2007–0039 contains all materials in the record concerning ITSNA's recognition. All submissions, including copyrighted

material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined ITSNA's expansion applications, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that ITSNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitations and condition. OSHA limits the expansion of ITSNA's recognition to include the 23 sites listed in Table 1, below. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

TABLE 1—LIST OF TEST SITES FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

ITSNA site name	Address	Country
Columbus	1717 Arlingate Lane, Columbus, Ohio 43228	United States.
Detroit	45000 Helm Street—Suite 150, Plymouth Township, Michigan 48170	United States.
Grand Rapids	4700 Broadmoor SE—Suite 200, Kentwood, Michigan 49512	United States.
Edmonton	14920 135 Ave., Edmonton, Alberta T5V 1R9	Canada.
Montreal	1829 32nd Avenue, Lachine, Quebec H8T 3J1	Canada.
Toronto	6225 Kenway Drive, Mississauga, Ontario L5T 2L3	Canada.
Mexico City	Poniente 134 No. 660, Col. Industrial Vallejo, Mexico City, Azcapotzalco 02300.	Mexico.
Kaufbeuren	Innovapark 20, Kaufbeuren, 87600	Germany.
Leatherhead	Cleeve Road, Leatherhead, Surrey KT22 7SA	United Kingdom.
Milton Keynes	Davy Avenue, Knowlhill, Milton Keynes, Buckinghamshire MK5 8NL ..	United Kingdom.
Udine	Via Principe di Udine 114, Campoformido, Udine 33030, ...	Italy.
Guangzhou	Building E, Guangdong Software Science Park, No. 7–2, Caipin Road, Science City—GETDD, Guangzhou, Guangdong 510663.	China.
Hangzhou	4th Floor, Building 4#, No. 22, 22nd Street, Qiantang District Hangzhou, 310018.	China.
Shanghai Fengxian	Plant 5, No. 6958 Daye Road, Fengxian District, Shanghai, 201405 ..	China.
Shanghai Qinzhou	No. 86, 1198 Qinzhou Road North, Shanghai, 200233	China.
Shenzhen	2F, Building B, No. 308 Wuhe Avenue, Zhangkengjing Community, GuanHu Subdistrict, LongHua District, Shenzhen, Guangdong 518067.	China.
Shunde (Foshan)	Guangzhou Branch Shunde Testing Site, Room 604, Block 5, Tianfulai International Industrial Park (the fifth phase), No. 3 Changfu West Road, Ronggui Town, Shunde District, Foshan City, Guangdong Province.	China.
Mumbai	“F Wing” Tex Centre, Chandivali Farm Road, Andheri (East), Mumbai, Maharashtra—400072.	India.
New Delhi	E–20 & E26 Block B1, Mohan Cooperative Industrial Area, Mathura Road, New Delhi, 110044.	India.
Tokyo	Yasuda Shibaura No.2 Bldg. 4F, 3–2–12, Kaigan, Minato-ku, Tokyo 108–0022.	Japan.
Seoul	3, Gongdan-ro 160beon-gil, Intertek Building, Gunpo-si, Gyeonggi-do 15845.	South Korea.
Bangkok	1285/5 Prachachuen Road, Wong Sawang, Bangsue, Bangkok 10800.	Thailand.
Taipei	5F, No. 423, Ruiguang Road, Neihu District, Taipei, 114690	Taiwan.

¹ In the preliminary notice, OSHA stated that ITSNA's expansion application was dated

December 18, 2020. However, OSHA cited to the correct docket number, OSHA–2007–0039–0047, in

that notice, which indicates the correct date of January 25, 2021.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, ITSNA must abide by the following conditions of the recognition:

1. ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. ITSNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. ITSNA must continue to meet the requirements for recognition, including all previously published conditions on ITSNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of ITSNA as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–20403 Filed 9–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for TUV Rheinland of North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces the final decision to add one test standard to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes effective on September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2300; email: robinson.kevin@dol.gov. OSHA's web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpc/nrtl/index.html>).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA), as a NRTL. TUVRNA's expansion covers the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for initial recognition, as well as for expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second

notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

TUVRNA submitted an application, dated October 17, 2022 (OSHA–2007–0042–0066), to expand recognition to include the addition of three test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing TUVRNA's expansion applications in the **Federal Register** on July 19, 2023 (88 FR 46188). The agency requested comments by August 3, 2023, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of TUVRNA's scope of recognition.

To review copies of all public documents pertaining to TUVRNA's application, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor at (202) 693–2350. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUVRNA's recognition. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined TUVRNA's expansion application, their capability to meet the requirements of the test standard, and other pertinent information. Based on its review of this evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVRNA's scope of recognition. OSHA limits the expansion of TUVRNA's recognition to testing and certification of products for demonstration of conformance to the test standards shown below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2272	Standard for Electrical Systems for Personal E-Mobility Devices.
UL 2849	Standard for Electrical Systems for eBikes.
UL 60335–2–29*.	Household and Similar Electrical Appliances: Particular Requirements for Battery Chargers.

*Represents the standard that OSHA will add to the NRTL Program's List of Appropriate Test Standards.

In this notice, OSHA also announces the final decision to add one new test standard to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the standard that is new to the NRTL Program. OSHA has determined that this test standard is an appropriate test standard and will add it to the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARD OSHA WILL ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 60335–2–29.	Household and Similar Electrical Appliances: Particular Requirements for Battery Chargers.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including but not limited to, abiding by the following conditions of recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. TUVRNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVRNA as a NRTL, subject to the limitations and conditions specified above. OSHA additionally adds one test standard to the NRTL Program's List of Appropriate Test Standards.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–20406 Filed 9–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0042]

CSA Group Testing & Certification, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition of CSA Group Testing & Certification, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and

Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of CSA Group Testing & Certification, Inc. (CSA) as a NRTL. CSA's expansion covers the addition of sixteen test sites to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including CSA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

CSA submitted an application, dated December 15, 2020 (OSHA–2006–0042–0034), requesting the conversion of sixteen existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy) published in the **Federal Register** on

November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled “Second Revision to the Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination.”

OSHA published the preliminary notice announcing CSA’s expansion application in the **Federal Register** on August 15, 2023 (88 FR 55480). The agency requested comments by August 30, 2023, but it received no comments in response to this notice. OSHA is now

proceeding with this final grant of expansion of CSA’s NRTL recognition.

To obtain or review copies of all public documents pertaining to the CSA application, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2006–0042 contains all materials in the record concerning CSA’s recognition. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY number (877) 889–5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined CSA’s expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that CSA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitations and condition. OSHA limits the expansion of CSA’s recognition to include the sixteen sites listed in Table 1, below. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

TABLE 1—LIST OF TEST SITES FOR INCLUSION IN CSA’S NRTL SCOPE OF RECOGNITION

CSA site name	Address	Country
CSA Group Milan	Palazzo Cassiopea, Via Paracelso N 22 20864 Agrate Brianza, Italy	Italy.
CSA Group Dallas	2860 Guilder Drive, Plano, Texas 75074	United States.
CSA Group Bangalore	Beary’s Global Research Triangle, A–3, Einstein Building Bidarahalli Hobli, Whitefield Ashram Road (SH 35) Bangalore—560 067, India.	India.
CSA Group Hawarden	Unit 6 Hawarden Industrial Park Hawarden, CH5 3US, United Kingdom.	United Kingdom.
CSA Group Plattling	Straubinger Str. 100 94447 Plattling, Germany	Germany.
CSA Group Seoul	494, Wiryeseunhwan-ro, Songpa-gu Seoul, Republic of Korea	Korea.
CSA Group Taoyuan	No. 26, Fuxing 3rd Road Guishan District, Taoyuan City, Taiwan	Taiwan.
CSA Group Taipei	5F No. 12, Wenhui Street Neihu District, Taipei City 114 Taiwan	Taiwan.
CSA Group Tokyo	5–40–6 Koishikawa Bunkyo-ku Tokyo 112–0002 Japan	Japan.
CSA Group Shanghai	Floor 1, Building 4 Qilai Industrial City, 889 Yishan Road, Shanghai, China 200233.	China.
CSA Group Atlanta	6215 Shiloh Crossing, Building 100 Suite A, Alpharetta, GA 30005	United States.
CSA Group Taichung	2F. –5 No. 633, Sec. 2, Taiwan Blvd. Xitun District, Taichung City 407, Taiwan.	Taiwan.
CSA Group Kunshan	Floor 1, Building 8 Tsinghua Science Park No. 1666 Zuchongzhi Road Kunshan, Jiangsu, China 215347.	China.
CSA Group Arnhem	Utrechtseweg 310, 6812 AR Arnhem, Netherlands	Netherlands.
CSA Group Guangzhou	No. 10, Ke Yan Road, Guangzhou Science Park Huang Pu District, Guangzhou, China 510663.	China.
CSA Group Frankfurt	Weismullerstr. 45, 60314 Frankfurt, Germany	Germany.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, CSA must abide by the following conditions of the recognition:

1. CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. CSA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. CSA must continue to meet the requirements for recognition, including all previously published conditions on CSA’s scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope

of recognition of CSA as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor’s Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.
[FR Doc. 2023–20402 Filed 9–20–23; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice to LSC Grantees of Application Process for Subgranting Special Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Notice of application dates and format for applications to make subgrants of LSC Special Grant Funds, including Technology Initiative Grant, Pro Bono Innovation Fund, and Disaster Relief Grant funds.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people. LSC hereby announces the submission dates for applications to make subgrants of its Special Grant funds. LSC is also providing information about where

applicants may locate subgrant application questions and directions for providing the information required to apply for a subgrant.

DATES: See **SUPPLEMENTARY INFORMATION** section for application dates.

ADDRESSES: Legal Services Corporation—Office of Compliance and Enforcement, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Megan Lacchini, Office of Compliance and Enforcement at lacchinim@lsc.gov or (202) 295–1506, or visit the LSC website at <http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant>.

SUPPLEMENTARY INFORMATION: Under 45 CFR part 1627, LSC must publish, on an annual basis, “notice of the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC’s website.” 45 CFR 1627.4(b). This Notice and the publication of the Subgrant Application on LSC’s website satisfy § 1627.4(b)’s notice requirement for LSC Special Grant programs. Only current or prospective recipients of LSC Special Grants may apply for approval to subgrant these funds.

An applicant must submit an application to make a subgrant of LSC Special Grant funds at least 45 days in advance of the subgrant’s proposed effective date. 45 CFR 1627.4(b)(2).

All applicants must provide answers to the application questions in GrantEase and upload the following documents:

- A draft subgrant agreement (with the required terms provided in LSC’s Special Grant Subgrant Agreement Template); and
- A subgrant budget (using LSC’s Subgrant Budget Template)

Applicants seeking to subgrant to a new subrecipient that is not a current LSC grantee or applying to renew a subgrant with an organization that is not a current LSC grantee in a year in which the applicant was not already required to submit the documents listed below as a part of an application to subgrant LSC Basic Field funds, must also upload:

- The subrecipient’s accounting manual;
- The subrecipient’s most recent audited financial statements;
- The subrecipient’s current cost allocation policy (if not in the accounting manual);
- The recipient’s 45 CFR part 1627 policy (required under 45 CFR 1627.7).

A list of subgrant application questions, the Special Grant Subgrant Agreement Template, and the Subgrant Budget Template are available on LSC’s

website at <http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant>.

LSC encourages applicants to use LSC’s Special Grant Subgrant Agreement Template as a model subgrant agreement. If the applicant does not use LSC’s Template, the proposed agreement must include, at a minimum, the substance of the provisions of the Template.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the submitted documents or Draft Agreement provided with the application. The applicant must then upload a final and signed subgrant agreement through GrantEase by the date requested.

As required by 45 CFR 1627.4(b)(3), LSC will inform applicants of its decision to disapprove, approve, or request modifications to the subgrant no later than the subgrant’s proposed effective date.

Authority: 42 U.S.C. 2996g(e).

Dated: September 15, 2023.

Stefanie Davis,

Deputy General Counsel.

[FR Doc. 2023–20413 Filed 9–20–23; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2023–6; COLC–2023–0006]

Artificial Intelligence and Copyright

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry; extension of comment periods.

SUMMARY: The United States Copyright Office is extending the deadline to submit comments in connection with a study of the copyright law and policy issues raised by artificial intelligence (“AI”) systems.

DATES: The comment periods for the document published at 88 FR 59942 on August 30, 2023, are extended. Initial written comments are due no later than 11:59 p.m. Eastern Time on Monday, October 30, 2023. Written reply comments are due no later than 11:59 p.m. Eastern Time on Wednesday, November 29, 2023.

ADDRESSES: For reasons of governmental efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments should be submitted electronically through *regulations.gov*.

Specific instructions for submitting comments are available on the Copyright Office website at <https://copyright.gov/policy/artificial-intelligence>. If electronic submission is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT:

Rhea Efthimiadis, Assistant to the General Counsel, by email at mefth@copyright.gov or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: On August 30, 2023, the U.S. Copyright Office issued a notice of inquiry seeking comments from the public on a number of questions about the copyright law and policy issues raised by AI systems. The notice set a deadline for initial comments on October 18, 2023, and for reply comments on November 15, 2023.

To ensure that members of the public have sufficient time to prepare responses to the Office’s questions, and to ensure that the Office can proceed on a timely basis with its inquiry of the issues identified in its notice with the benefit of a complete record, the Office is extending the deadlines as set forth here. Initial written comments will now be due by 11:59 p.m. Eastern Time on October 30, 2023. Reply comments will be due by 11:59 p.m. Eastern Time on November 29, 2023.

Dated: September 18, 2023.

Suzanne V. Wilson,

General Counsel and Associate Register of Copyrights.

Maria Strong,

Associate Register of Copyrights and Director of Policy and International Affairs.

[FR Doc. 2023–20480 Filed 9–20–23; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comments.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following new collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before November 20, 2023 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mahala Vixamar, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at PRAComments@NCUA.gov.

FOR FURTHER INFORMATION CONTACT:

Address requests for additional information to Mahala Vixamar at the address above or telephone (703) 718-1155.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-NEW.

Title: Supervisory Stress Test Annual Data Collection, 12 CFR part 702, subpart C.

Type of Review: New collection.

Abstract: The NCUA Board (Board) has determined, to protect the National Credit Union Share Insurance Fund (NCUSIF) and the credit union system, that the largest Federally Insured Credit Unions (FICUs) should have systems and processes in place to monitor and maintain their capital adequacy. Subpart C of part 702 of NCUA's regulations codifies capital planning and stress testing requirements for federally insured credit unions with \$10 billion or more in assets (covered credit unions). Covered credit unions are further delineated by asset tiers. Tier I are credit union with \$10 billion or more in total assets, but less than \$15 billion in total assets; tier II are credit union with \$15 billion or more in total assets, but less than \$20 billion in total assets; and tier III are credit union with \$20 billion or more in total assets. Tier II and III credit unions are required to conduct supervisory stress tests and section 702.306 (b) codifies that NCUA reserves the right to conduct stress tests of covered credit unions at any time and where both NCUA and a covered credit union have conducted the tests, the results of NCUA's tests will determine whether the covered credit union has met the requirements of this subpart. To facilitate NCUA's ability to conduct supervisory stress test on covered credit unions, section 702.306(d) requires that covered credit unions must provide NCUA with any relevant qualitative or quantitative information requested by NCUA pertinent to capital plans or stress test under this part.

Affected Public: Private sector: Not-for-profit institutions.

Estimated Number of Respondents: 12.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 12.

Estimated Hours per Response: 20.

Estimated Total Annual Burden Hours: 240.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023-20453 Filed 9-20-23; 8:45 am]

BILLING CODE 7535-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023-266 and CP2023-269]

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:* September 22, 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.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2023-266 and CP2023-269; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 53 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 14, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:*

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).

Kenneth R. Moeller; *Comments Due:* September 22, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–20400 Filed 9–20–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings

(Issued September 18, 2023)

	Docket No.
Competitive Product Prices: Inbound Competitive Multi-Service Agree- ments with Foreign Postal Operators. Interconnect Remunera- tion Agreement— United States. Postal Service and Specified Postal Oper- ators II (MC2010–34). Negotiated Service Agreements.	CP2022–34.
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contracts. Priority Mail & USPS Ground Advantage Contract 54.	MC2023–269.
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contract 54 (MC2023–269). Negotiated Service Agreements.	CP2023–272.
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contracts. Priority Mail & USPS Ground Advantage Contract 55.	MC2023–270.
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contract 55 (MC2023–270). Negotiated Service Agreements.	CP2023–273.

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 (<https://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2022–34; *Filing Title:* Notice of United States Postal Service of Filing Modifications to Rates Under Inbound Competitive Multi-Service IRA–USPS II Agreement; *Filing Acceptance Date:* September 15, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* September 25, 2023.

2. *Docket No(s):* MC2023–269 and CP2023–272; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 54 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 15, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR

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).

3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 25, 2023.

3. *Docket No(s):* MC2023–270 and CP2023–273; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 55 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 15, 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:* September 25, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–20499 Filed 9–20–23; 8:45 am]

BILLING CODE P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® 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:* September 21, 2023.

FOR FURTHER INFORMATION CONTACT: Sean 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 September 15, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 54 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–269, CP2023–272.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–20412 Filed 9–20–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: October 3, at 1 p.m.; October 4, 2023, at 1 p.m.

PLACE: Alpharetta, GA.

MATTERS TO BE CONSIDERED:**Meeting of the Board of Governors**

Tuesday, October 3, at 1 p.m.;

Wednesday, October 4, 2023, at 1 p.m.

1. Strategic and Operational Items.
2. Financial and Personnel Items.
3. Administrative Items.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION:

Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260-1000; Telephone: (202) 268-4800.

Michael J. Elston,

Secretary.

[FR Doc. 2023-20564 Filed 9-19-23; 11:15 am]

BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Ground Advantage® 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:* September 21, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean 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 September 13, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Ground Advantage® Contract 3 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-268, CP2023-271.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023-20410 Filed 9-20-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* September 21, 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 September 13, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 8 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-267, CP2023-270.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023-20409 Filed 9-20-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® 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:* September 21, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean 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 September 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 53 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-266, CP2023-269.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023-20411 Filed 9-20-23; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98409; File No. SR-ISE-2023-11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Short Term Option Series Program To Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products

September 15, 2023.

I. Introduction

On May 31, 2023, Nasdaq ISE, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange's short term option series program ("Short Term Option Series Program") in Supplementary Material .03 of Options 4, Section 5 (Series of Options Contracts Open for Trading). The proposed rule change was published for comment in the **Federal Register** on June 20, 2023.³ On August 2, 2023, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission did not receive any comments. The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change⁷

Currently, the Exchange may open for trading series of options on certain symbols that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97719 (June 13, 2023), 88 FR 39876 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 98040, 88 FR 53569 (August 8, 2023) (designating September 18, 2023, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ For a full description of the proposed rule change, refer to the Notice, *supra* note 3.

in which monthly options series or Quarterly Options Series expire (“Short Term Option Daily Expirations”).⁸ The Exchange proposes to expand the Short Term Option Series Program⁹ to permit the listing of two Wednesday expirations for options on the United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF (collectively, “Wednesday ETP Expirations”).¹⁰

According to the Exchange, the Wednesday ETP Expirations would be similar to the existing Short Term Option Daily Expirations in that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week)¹¹ series of options on the ETPs that expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire.¹² And like Short Term Option Daily Expirations, in the event that Wednesday ETP Expirations would expire on a Wednesday, and that Wednesday is the same day that a Quarterly Options Series expires, the

Exchange would skip that week’s listing and instead list the following week; the two weeks would therefore not be consecutive. Options on each of the ETPs with Friday expirations would continue to have a total of five Short Term Option Expiration Dates, provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire. The interval between strike prices for the proposed Wednesday ETP Expirations would be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.¹³ As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series would be p.m.-settled.

In support of its proposal, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Daily Expirations.¹⁴ The Exchange also represents that it has the necessary system capacity to support and properly monitor trading in the proposed new expirations.¹⁵ Additionally, the Exchange states that it does not believe that any market disruptions will be encountered with the introduction of these proposed option expirations.¹⁶ The Exchange currently trades Short Term Option Daily Expirations on SPY, QQQ, and IWM, including Wednesday Expirations, and states that it has not experienced any market disruptions nor issues with capacity.¹⁷ Further, the Exchange provides data comparing the ETPs to SPY, QQQ, and IWM, which have Wednesday Expirations today.¹⁸ According to the Exchange, the occurrence of the ETPs moving through at least one strike price after the close of trading has been less frequent than for SPY, QQQ, and IWM. In addition, the average annualized closing volatility in the last thirty minutes of trading for the ETPs has historically been lower than that of SPY, QQQ, and IWM.¹⁹ Finally, the Exchange states that the ETPs trade within “complexes” where, in addition to the underlying security,

there are multiple highly-correlated instruments available for hedging.²⁰ Therefore, the Exchange believes the proposal would not be a strain on liquidity providers.²¹

III. Proceedings To Determine Whether To Approve or Disapprove SR-ISE-2023-11, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act²² to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission’s analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,²³ the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to expand the Short Term Option Series Program to permit the listing of Wednesday ETP Expirations. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change’s consistency with the Act, and in particular, section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.²⁴

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the

⁸ See Supplementary Material .03 to Options 4, Section 5. Currently, the Exchange may list no more than a total of two Monday and Wednesday expirations on the iShares Russell 2000 ETF (“IWM”) and no more than a total of two Monday, Tuesday, Wednesday, and Thursday expirations on the SPDR S&P 500 ETF Trust (“SPY”) and the Invesco QQQ Trust (“QQQ”). See Table 1, Supplementary Material .03 to Options 4, Section 5.

⁹ Options 1, Section 1(a)(49) provides that a Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

¹⁰ The United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF are referred to collectively as the “ETPs.”

¹¹ The Exchange proposes to clarify the rule text in Supplementary Material .03 to Options 4, Section 5 to specify that it can list two Short Term Option Expiration Dates beyond the current week for each Monday, Tuesday, Wednesday, and Thursday expiration. Consistent with the current operation of the rule, the Exchange states that if it adds a Wednesday expiration (“Wednesday Expiration”) on a Tuesday, there would be three outstanding Wednesday Expirations at one time. See Notice, *supra* note 3, 88 FR at 39877, n.4.

¹² See *id.* at 39877.

¹³ The Wednesday ETP Expirations would have a strike interval of \$0.50 or greater for strike prices below \$100, \$1 or greater for strike prices between \$100 and \$150, and \$2.50 or greater for strike prices above \$150.

¹⁴ See *id.* at 39884.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.* at 39878.

¹⁸ See *id.* at 39882–83.

¹⁹ See *id.* at 39883.

²⁰ See *id.* at 39884.

²¹ See *id.*

²² 15 U.S.C. 78s(b)(2)(B).

²³ *Id.*

²⁴ 15 U.S.C. 78f(b)(5).

proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, is consistent with sections 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²⁵ any request for an opportunity to make an oral presentation.²⁶

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 12, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 26, 2023. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2023-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-ISE-2023-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2023-11 and should be submitted by October 12, 2023. Rebuttal comments should be submitted by October 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98410; File No. SR-MIAX-2023-22]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading, To Implement a Low Priced Stock Strike Price Interval Program

September 15, 2023.

On June 5, 2023, Miami International Securities Exchange, LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 404, Series of Option Contracts Open for Trading. Specifically, the Exchange proposed to adopt Interpretations and Policies .12 to

Rule 404 to implement a new strike interval program for stocks that are priced less than \$2.50 and have open interest equal to or greater than 1,000 contracts. The proposed rule change was published for comment in the **Federal Register** on June 22, 2023.³ On August 4, 2023, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 14, 2023, the Exchange withdrew the proposed rule change (MIAX-2023-22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98407; File No. SR-ICEEU-2023-023]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Amendments the Futures and Options Risk Procedures

September 15, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2023, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to section 19(b)(3)(A)³ of the Act and Rule

³ See Securities Exchange Act Release No. 97733 (June 15, 2023), 88 FR 40887. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-miax-2023-22/srmiax202322.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 98058, 88 FR 54361 (August 10, 2023). The Commission designated September 20, 2023 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4.

²⁶ section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (Jun. 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁷ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

19b–4(f)(4)(ii) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. On September 14, 2023, ICE Clear Europe filed Amendment No. 1 which amends and restates in its entirety the Form 19b–4 Information and Exhibit 1A.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter “the proposed rule change”) from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to amend the Futures and Options Risk Procedures (the “F&O Risk Procedures” or “Procedures”)⁶ to make certain updates and clarifications relating to risk management for the F&O product category, including to reference the Clearing House’s Model Risk Policy and update the Document Governance and Exception Handling provisions.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend its Futures and Options Risk Procedures to make various updates and clarifications, including to add a section describing the existing F&O Guaranty Fund, make reference to the recently revised Model Risk Policy,⁷ and update

the Document Governance and Exception Handling language. Various non-substantive drafting changes and improvements would also be made throughout the document. The amendments generally do not represent a change in the Clearing House’s practices, but rather are intended to improve and clarify the documentation of existing risk management practices.

In the purpose section of the document, the amendments would clarify that details of models described in the Procedures (in addition to processes) are included in the relevant model methodology and procedure documentation. The amendments would further provide that any changes to the risk parameters would be subject to the governance set out in the Model Risk Policy. The amendments would also make non-substantive clarifications to the description of the role of ICE Clear Europe as a central counterparty.

The revised Procedures would simplify the description of Clearing Member groups and clarify that Clearing Members in the same Member Group may be based in various jurisdictions rather than specifically referencing a Clearing Member in Europe and another part of the world. The amendments would also make clear that in order to perform exposure analysis at appropriate levels of aggregation, the Clearing House associates its Clearing Members in Member Groups. Additional language regarding how Member Groups are identified and the internal groups responsible for the membership onboarding process would be removed as unnecessary.

The amendments would also simplify and clarify the discussion of the various types of proprietary and client margin accounts made available to its Clearing Members (which are established pursuant to the published Rules and Clearing Procedures and are not being changed by virtue of these amendments). The amendments would state more simply that the Core IM is calculated on either a “Gross” or “Net” basis dependent upon the type of margin account. (As an exception, the chart detailing the margin accounts would change the Core IM Method for the Individual Client (ISOC) accounts (I) and (J) from Net to N/A, as the net/gross distinction is not applicable for such accounts). Various conforming changes would be made to the summary of the accounts, including to reflect that the house account (H) is margined on a net basis, as was already reflected in the chart. Additional clarifications would be made that accounts are margined on a net or gross basis (rather than a net and gross basis). The amendments

would also explain more concisely that information as to Money Rules and FCM/BD customer applicability is included in the table to distinguish account types. A footnote would also be added to provide an ICEU EMIR Disclosure Statement that supplies further details on the margin account types.

The amendments further clarify the distinction between the net and gross calculations of initial margin in light of CFTC and Bank of England/EU requirements. The amendments note that EU rules treat the one-day MPOR gross margin calculation under CFTC rules as equivalent to the two-day MPOR net margin calculation. The amendments also make non-substantive drafting clarifications to the discussion of net and gross margin methods. The amendments also add a statement that house and proprietary affiliate positions of a clearing member are calculated using a minimum two-day MPOR. The amendments reflect existing practice and would not change the manner of calculation of initial margin for any accounts. The amendments would remove as unnecessary language referencing ICE Clear Europe setting up multiple customer accounts to cater for ESMA and CFTC requirements.

The amendments would clarify that ICE Clear Europe performs position keeping of all positions belonging to each account of both clearing members and non-clearing members (defined as members of ICE exchanges that are not clearing members). The changes would also clarify that for gross margined accounts, the Clearing House will rely on a gross client margin file provided by the clearing member for purposes of position management and calculation of gross initial margin. The changes also address reconciliation of the gross client margin file against actual positions in the relevant account and margining of any inconsistencies. These amendments do not represent a change in current practice by the Clearing House.

The amendments would specify that the Clearing Risk Department is the owner of the Procedures document and remove references to the F&O Market Risk team.

The discussion of initial margin would be revised for greater simplicity and clarity and are not intended to change the substance of the calculation of initial margin, which is set forth in the existing applicable model documentation for the ICE Risk Model. The amendments would clarify that initial margin consists of Core IM and Additional IM to mitigate the risk it is exposed to on all Futures and Options positions. The amendments would also

⁴ 17 CFR 240.19b–4(f)(4)(ii).

⁵ Amendment No. 1 updates the 19b–4 Information and the Exhibit 1A to more fully describe changes outlined in the Exhibit 5. ICEEU represents that it did not make any changes to its Exhibit 5.

⁶ Capitalized terms used but not defined herein have the meanings specified in the F&O Risk Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

⁷ See, The Model Risk Policy as described in Exchange Act Release No. 34–98138, SR ICEEU–2023–019 (August 15, 2023), 88 Fed Reg. 56901 (Aug. 21, 2023).

clarify that the Procedures provide detail to each of the IM components (removing unnecessary references to frequency, limits and thresholds, exceptions and escalation).

The amendments would clarify that the ICE Risk Model uses margin rates in computing Core IM and these margin rates would be the responsibility of the Clearing Risk Department. A reference to a specific version of the IRM Margin Rate Calibration Model Documentation would be deleted as unnecessary and computation of the model margin rates, as opposed to calibrated margin rate, would be inserted above the table detailing the computation. The table of standard settings for the computation of model margin rates (referred to as the "Autopilot rates") would be simplified, removing rows labeled "System/Process", "Test/Frequency", and "Exceptions" as unnecessary, and removing references to specific Energy and Financial & Softs sectors. Likewise, the Margin Period of Risk would be summarized as 1 day or 2 days depending on the product, consistent with the discussion above. The summary of the lookback period would be revised from at least 100 days to VaR that is at least as conservative as that based on a 250-day lookback. The Anti-Procyclicality would be amended to be at least 25 percent stressed volatility (rather than exactly 25%). The row on Risk Parameters would be replaced with a summary of the output of the risk model, which is the ICE Risk Model margin rates including those previously specified.

The amendments would clarify the process for review and promotion of production margin rates. The amendments are intended to correctly reflect the existing practice that the review of the production margin rate is performed versus trigger criteria daily (as opposed to quarterly). As a result of the daily review, references to ad hoc updates in addition to quarterly reviews would be deleted as they are no longer required. This would include the deletion of the governance procedures related to review of the exceptions driving ad hoc review and related effectiveness without notice. The amendments would address that that production margin rates are set to the Autopilot model rates at a specific point in time after each review through a process called promotion. It would further state that the production rates are the margin rates used in the calculation of Clearing Member's Core IM requirements. The steps to review and the promotion of the proposed production margin rates would include mention of their promotion. The steps

would also be simplified to state that first the update to the production margin rates would be proposed and reviewed by the Clearing Risk Department, then the Clearing Risk Department would seek approval for the margin update. Then once approved, the Clearing Risk Department would promote the margin rates into the Risk System, followed by informing the Clearing Members and wider market of the new margin rates by means of the Clearing House's website. The amendments would add that typically one business day's notice would be given to the market from the date of the circular, and the Clearing Risk Department would then upload the approved margin rates to the ICE Clear Europe website upon publication of the circular. A table summarizing the review and promotion process would be deleted as duplicative and unnecessary.

A cross-reference to documentation relating to ICE Risk Model parameters would be updated to include a general reference to the ICE Risk Model documentation instead of an outdated version. Details on certain parameters relating to EWMA volatility and APC stress volatility would be removed as they are addressed in the ICE Risk Model documentation. The amendments would add another new sub-section on the ICE Risk Model Daily Requirements that would outline the process for computing Core IM as part of the End of Day process. This would include computation of the ICE Risk Model daily margin requirements and EMIR Add-on for each Clearing Member margin account. The amendments would also delete outdated references to the IRM V1.0 Model Documentation, related risk array files and inputs, and the ECS system. The related table with the summary of products eligible under each margin account would change the I and J Accounts to N/A as opposed to Net margining type. The footnote would explain that for these accounts the sub-clients within the client account are individually (rather than net) margined. Any material change in Core IM would be escalated to Operations, instead of the previous plus or minus 5 percent (or more depending on known margin change) escalation threshold. This section would also reference a summary of the IRM Margin Rate Promotion and Core IM processes that would be added in the Appendix to the Procedures. These changes are consistent with existing margin practice but are intended to document the current process more clearly.

In terms of additional IM, the amendments would specify that such amounts are to collateralize risks not

captured by the Core IM amount. Clarifications would be made to the descriptions of various types of additional IM, as discussed herein. For example, amendments would clarify that the additional risk from concentrated positions would be covered through a Concentration Charge add-on, and that the additional margin is called on a t+1 basis to be met the following day. The requirement would clarify the notice process for additional IM through the MFT system, remove an outdated reference to EoD reporting and remove unnecessary distinctions between concentration charges for different product segments. The summary table of the Concentration Charge process would be deleted, and relevant terms moved to the added Appendix. In the Parameter Calibration section, the amendments would remove the existing discussion and add instead that the details of the Concentration Charge model or risk parameters would be described in the relevant Concentration Charge model documentation.

In the Stress Margin section, the amendments would add a general description of the stress loss charge as ensuring that sufficient pre-funded resources to ensure regulatory compliance are held at all times. The amendments would also clarify that any Stress Loss Charge top-up requirements would be called via an intraday call on a t+1 basis so that, for example, positions as of the end of day on Monday could incur additional margin called on Tuesday for receipt on Tuesday. The amendments would clarify that the total Stress Loss Charge would be posted in the end of day additional margin requirement so that any surplus or deficit is part of the end of day margining. The summary of the Stress Loss Charge process would be deleted, and relevant terms moved to the added Appendix. Additional details of the Stress Loss Charge model and risk parameters would be removed, and a cross-reference added to the Futures and Options Guaranty Fund model documentation (which addresses such parameters). An incorrect cross-reference to the F&O Stress Testing Policy would be removed.

In the Shortfall Margin section, the amendments would specify that Shortfall Margin would be called to cover uncollateralized stress loss (as calculated at the margin account level). The amendments would also state that Shortfall Margin would be called on a t+1 basis to be met on the following day, so that, for example, positions on Monday EOD can incur additional margin called on Tuesday for receipt on

Wednesday morning. The amendments would delete unnecessary provisions relating to the posting of the requirement against a specific ledger type in daily reports and EOD reporting through ECS. The summary of the Shortfall Margin process would be removed, and relevant details moved to the Appendix.

In the Specific Wrong-Way Risk section, the amendments would explain that the Wrong Way Risk additional margin requirements are called on a t+1 basis to be met the following day, so that, for example, positions as of Monday EOD can incur additional margin called on Tuesday for receipt on Wednesday morning. As with other categories of additional IM, the amendments would delete unnecessary provisions relating to the posting of the requirement against a specific ledger type in daily reports and EOD reporting of the additional amount through ECS. A table summarizing the Wrong Way Risk process would be removed and relevant details moved to the Appendix.

In the EMIR Add-on section, the amendments would clarify various aspects of this add-on, which is collected for house and affiliate accounts for products for which Core IM is otherwise calculated using a 1-day MPOR. The add-on covers the amount, if any, by which Core IM would exceed that amount if calculated on a 2-day MPOR basis, in order to ensure that house and affiliate positions are margined using a minimum 2-day MPOR as required under EMIR. The amendments would further clarify that the EMIR Add-on is called at the same time as Core IM requirements, so that, for example, House and Affiliate account positions as of Monday EOD can incur EMIR add-on called on Monday night for receipt on Tuesday morning. A table summarizing the EMIR add-on process would be removed and relevant provisions moved to the Appendix. The amendments would delete language concerning the review and subsequent parameter recalibration as unnecessary as it is covered in the relevant model documentation.

In the Delivery Margins section, the amendments would revise the Procedures to state explicitly that the delivery margin is designed to cover potential price moves at a 99th percentile level for the product in delivery. The amendments would further state that the Delivery Margin is typically set to the front month scanning margin rate for the product and held by the CCP until buyer security is paid by the buyer. The description of the calculation of Buyer Security would be clarified to be the notional value of

bought positions that are deliverable within the following 2 business days. Similarly, the description of the calculation of Seller Security would be modified to be an additional requirement posted by the seller, calculated to cover any applicable costs and charges, should they be unable to deliver the agreed product. The definition of Contingent Variation Margin would be clarified to be the difference between the Exchange Delivery Settlement Price and a representative market price for the remaining portion of the given underlying that is yet to be delivered (analogous to Variation Margin). Tables summarizing the Delivery Margin, Buyer/Seller Security and the Contingent Variation Margin would be removed with relevant details moved to the Appendix.

In the Net Liquidating Value ("NLV") section, certain non-substantive drafting improvements would be made. In addition, the description of the top up for NLV credit/debit would be revised to state that it be called for at the end of the day (call time t) and not the following day. A table summarizing the NLV would be removed with relevant details moved to the Appendix.

In the Intraday and Overnight Buffer section, the amendment would add a statement of the use of mandatory buffer, which is called when trading out of intraday margining hours is observed that increases Core IM requirements above thresholds. For these positions traded outside the hours covered by the intraday margin process, the IM requirements are calculated using IRM. In cases where the resultant increase to an account's IM exceeds the limit set, an overnight buffer equal to the largest exceedance is requested and held for the following 30 days. The amendments would add that this process would be introduced to achieve compliance with relevant requirements of EMIR⁸ and would only be applicable to 1-day gross client omnibus margined accounts. The amendments would further clarify that voluntary buffer could be posted to reduce the Clearing Members' operational burden of managing intraday margin calls. A table summarizing the intraday and overnight buffer process would be removed and relevant details moved to the Appendix.

In the Ad-Hoc Buffer section, the amendments would clarify that Clearing Members may be requested to post additional buffers for any risks not covered by the requirements detailed in the Procedures. The amendments would

specify that the requirements would be set by the Clearing Risk Department. A table summarizing the ad hoc buffer process would be removed and relevant details moved to the Appendix.

In the discussion of intraday margining, the amendments would provide a clearer statement of the basis for such margining: that although the Clearing House collateralizes risk through IM and Variation Margin as part of the overnight process, the Clearing House may be exposed to uncollateralized exposures, or Intraday Shortfalls, due to adverse market price movements causing a change in the value of members positions, new trading activities resulting in an increased IM requirement on Clearing Members' accounts and the value of securities held as collateral being reduced. The amendments would clarify that the Clearing Risk Department could calculate any additional IM that it may require on a near real-time basis intraday.

In respect to Intraday Risk Monitoring the amendments would specify that the Clearing Risk Department monitors changes in Core IM in addition to Variation Margin on an ongoing basis. The Intraday Margin requirement of an account would be the sum of the Intraday IM and Intraday Variation Margin of the account.

The section on Core Intraday IM Calculation would be updated and moved to Section 4.2. The amendments would accordingly delete previous language under Section 4.3 that was titled "Intraday Core IM Calculation". The revised section would state that the Core Intraday IM would be calculated and, when above thresholds, called on a near-real time basis intraday. For gross margined accounts, the amendments would reflect that because gross positions are only received at end of day, the Clearing House will not have near-real-time data for purposes of intraday margining. As a result, the Clearing House uses the previous end of day gross margin plus the change in net 2-day margin for the account between the start of day and the current point in time to determine intraday Gross IM. The amendments would detail the step by step process in the calculation and the formula that would be employed (these steps would replace an existing summary of steps to update references and terminology used in the amended Procedures). The amendment would note that ICE Clear Europe utilizes 2D MPOR for calculating Intraday Net IM and Start of Day Net IM, and that only the Intraday Net IM changes throughout the day (neither the End of Day Gross IM nor Start of Day Net IM change

⁸ Article 26 of EMIR RTS Regulation (EU) No 153/2013 (ESMA/2016/429).

throughout the day). The amendments would specify that for net margined accounts, the current real time net position is used to calculate Core Intraday IM in the same way as End of Day IM for those accounts.

In reference to Intraday Shortfall, the amendments would clarify that the calculation for the current collateral on account would include both collateral used to meet end of the day IM requirements and additional collateral available to cover intraday calls. The amendments would remove a statement that at a minimum, prices are refreshed hourly (as the Clearing House expects prices to be refreshed more frequently) but retain the general principle that the Clearing Risk Department monitors the prices utilized to value securities deposited as collateral throughout the day. The amendments would make various non-substantive drafting clarifications to the intraday limits. In addition, for Clearing Member Limit 2, the amendments would specify that the total value of collateral on deposit would be that of the loss-making accounts and collateral in the House account. The amendments would add that for Clearing Limit 1 (in addition to Clearing Limit 2), the Clearing House would permit use of excess collateral present on the House account to offset Intraday Shortfalls arising on all other accounts in deficit. The amendments also make clear that the Clearing house can at its discretion alter, rather than only reduce, the limits applicable to individual accounts as this more accurately reflects the current practice of the Clearing House.

For Intraday Margin Call Triggers, the amendments would remove a duplicative statement of the minimum shortfall for an intraday call. The amendments would also clarify that ICE Clear Europe may call for additional collateral at any time to mitigate any (not just material) risk, consistent with the existing Rules and current practice.

The Intraday Margin Call Procedure would be revised to state that the 30-minute warning of a trigger breach is at the Clearing House's discretion. The amendments would also remove, as a means of limiting intraday risk and satisfying a margin call, improving the profit and loss of the account (as that is likely impractical in the relevant timeframe). The amendments would also remove a concept that the Clearing Risk Department would make recommendations to clearing members to avoid receiving intraday calls; rather, the goal would be to provide warnings prior to 19:30 London time so that all intraday calls are issued prior to 20:00 London time. The amendments would

state that more than one intraday call may be made during the same day as required (without necessarily being based on market conditions). Certain references to the use of the APS system in connection with providing cash or collateral would be deleted in this section and throughout the Procedures as unnecessary (and would not reflect a change in current practice). A diagram presenting the procedure for an Intraday Margin Call would be deleted as unnecessary.

In the Overnight Window Monitoring section, the amendments would clarify the specific gross margined and ISOC accounts to which overnight monitoring applies. The amendments would also state that the Clearing Risk Department (rather than a senior Clearing Risk Department person), would issue a margin call or require the Clearing Member to take other risk reducing action, when appropriate. (ICE Clear Europe believes it is appropriate for the responsibility to be on the department rather than a senior individual.) An escalation process where a Member cannot be contacted or does not reduce positions would be deleted along with notification of regulators, as this information is contained in separate Clearing House default management procedures.

In the Intraday Buffer section, the amendments would clarify that if a Clearing Member wishes to reduce the operational burden of frequent intraday calls or Overnight Buffer, then the Clearing Member may choose to lodge excess collateral as Intraday Buffer. The amendments would also clarify that where a Clearing Member notifies ICE Clear Europe that it no longer wants to lodge Intraday Buffer, the buffer will be available to be returned after the next overnight margin run. The amendments remove unnecessary specifications of the means of providing such a notice. The amendments would also delete as unnecessary a statement that the Clearing Member would be able to choose to fund the requirement with the type of collateral of their choosing.

In the Overnight Buffer section, the amendments would specify the particular gross margining and ISOC accounts to which it applies. The amendments would also correct that the amount will be called as part of the End of Day process (rather than intraday).

In the Returning of Margin Call Collateral section, the amendments would provide that margin posted intraday in respect of an intraday margin call may, in extraordinary circumstances at the discretion of the Treasury Department and Clearing Risk Department, be returned in cases where

the Clearing Member has unrealized gains (*i.e.*, positive intraday variation margin). The amendments would also correct a reference to the End of Day process (as opposed to the End of Day margining process).

The amendments would replace the existing discussion of the F&O Guaranty Fund with a new section describing generally the sizing of the F&O Guaranty Fund, as established pursuant to the published Rules and Finance Procedures and the existing F&O Guaranty Fund model documentation. The amendments would describe the required size of the F&O Guaranty Fund, as being adequate to cover the first and second largest, non mutually exclusive, uncollateralized losses from Member Groups resulting from agreed stress testing scenarios. The size also has to be sufficient to enable the Clearing House to withstand a Clearing Member default to which the Clearing House has the largest stress testing exposure, or the second and third largest if the sum of those are greater. The size has to be sufficient to cover the larger of the sum of the individually calculated segments for Energy and Financials & Softs ("F&S") member portfolios or the largest contemporaneous scenario. If the Energy and F&S segment fund is smaller than the largest contemporaneous losses scenario, then an additional guaranty fund apportionment amount would be calculated and would be allocated to both Energy and F&S Fund segments in accordance with the Clearing Rules. In establishing the size of the F&O Guaranty Fund the ICE Initial Contribution is not included and must be met by Clearing Member contributions only.

The amendments would add that review of the size of the F&O Guaranty Fund would occur at least every two months and would be based on historical stress testing results and other factors ICE considers relevant. The added section would describe the steps taken in the periodic review process, and the role of relevant ICE Clear Europe committees. Ad hoc assessments could be triggered by the Clearing House in addition to the periodic review. Extraordinary reviews may also be necessary based on stress testing results.

The amendments would state that Clearing Members will normally have five UK business days (from the date of the notice) to lodge sufficient funds with the Clearing House if the overall level of the F&O Guaranty Fund or a specific Clearing Member's allocation must increase, consistent with the requirements of the Rules and Finance Procedures. Under extreme circumstances, the Clearing House can

accelerate the call of the F&O Guaranty Fund requirements to a one day's notice or otherwise reasonably change the notice period. A failure to meet these payments would be considered a breach of Clearing House Clearing Rules. Clearing Members would also have the ability to withdraw excess funds that result from a decrease in their fund contributions following a review of the level of the F&O Guaranty Fund.

The amendments would add that ICE Clear Europe's recommendations on the level of the F&O Guaranty Fund would be based on several factors including the level of the largest member's uncollateralized losses historically and how it compares against the associated segment fund level or the total F&O Guaranty Fund, the level of the second and third largest members uncollateralized losses historically and how it compares against the associated segment fund level or the total F&O Guaranty Fund, the amount and number of stress loss charges called across memberships and any other relevant factors ICE Clear Europe deems appropriate. The size of the F&O Guaranty Fund would also be subject to a floor in accordance with regulations, as described in further detail in the existing Futures and Options Guaranty Fund model documentation.

The amendments would detail that a particular Clearing Member's contribution to each of the Fund segments should reflect its relative share of clearing activity and relative share of uncollateralized loss. The amendments described the two factor model used in allocating the F&O Guaranty Fund, based on IM and Uncollateralized Stress Loss, as provided in the existing Futures and Options Guaranty Fund model documentation. The amendments would also state that additional rules that may apply to the F&O Guaranty Fund are specified in the Clearing Rules and a summary of the F&O Guaranty Fund sizing and contribution processes would be found in the Appendix.

Various revisions would be made in the section on Model Performance to improve clarity. The amendments would clarify the drafting of a general statement regarding the calculation of core initial margin to reflect that the calculation is used to derive core initial margin at the member account level. The amendments are intended to clarify the top day margin coverage calculation performed by the Clearing House to assess whether the Core IM covers market price movements over the relevant MPOR at the 99th percentile level. The assessment is made at both the margin account level (the "macro" or "portfolio" level) and product level

(the "micro" level). An outdated reference to the previous IRM v.1.0 model documentation would also be deleted. In the revised discussion of margin Coverage, scope and definitions, references to certain EMIR requirements would be removed (as the relevant definitions incorporating regulatory requirements are part of the Procedures). At the macro level, the amendments would clarify that the margin coverage is calculated by comparing Clearing Member account's Core IM requirement to the clean P&L. (Provisions addressing frequency of back-testing are removed in this section as the topic is addressed elsewhere in the Procedures.) Another reference to the CRD database and the results being stored in the database would be deleted as unnecessary detail for the Procedures. Non-substantive clarifications would be made to the calculation of Margin Coverage.

In the section for Back Test Statistics the amendments would clarify that back testing involves consideration of a number of historical observations. The amendments would delete language stating that statistics based on less than 200 days cannot be considered statistically significant and note that statistical back-testing is usually performed considering at least 250 business days. Although the Clearing Risk Department would retain the discretion to use other back-testing statistics in addition to the Basel Traffic Light System, the amendments would remove unnecessary references to specific examples of such statistics. A detailed escalation process based on the results of the statistics handled by the Risk Manager would also be deleted. As revised, the Clearing Risk Department would determine the appropriate action to address any breaches.

The amendments would specify that for macro level margin coverage, breaches would be monitored daily (but an unclear reference to such breaches being "controlled" daily would be removed). A breach would be reported, investigated and signed off by the Clearing Risk Department, not a specific risk manager as previously stated. The examples of appropriate action would be modified for concision to include reviewing the margin model and/or increasing the relevant production margin rates based on the Autopilot model.

The amendments would specify that for the micro level, coverage of F&O margins rates would be reported daily. Any breaches driving a breach at margin account level would be investigated and reviewed by the Clearing Risk Department, in efforts to provide

information on the drivers of the breach and assess whether the breach was driven by erroneous prices. The amendments would clarify that actions required as a result of a breach would no longer be escalated to the risk manager but would be at the discretion of the Clearing Risk Department. Such mitigation actions could include reviewing and updating the relevant margin rates. Prior language relating to specific monitoring of outright and spread F&O parameters has been removed as unnecessary in light of the more general provisions of the revised draft.

The amendments would specify that back testing results that fall in the red or yellow zones under the Basel Traffic Light system would be reviewed and investigated by the Clearing Risk Department. Specifically for the micro level, the amendments would recognize that the large amount of margin parameters would make it difficult to review and action all back test statistic results. The amendments would make clarifying adjustments to the list of priorities when reviewing a statistical back test. The products driving red or yellow back test statistics would be identified and their back test performance would be reviewed. Micro back test statistics in the standard Basel redzone not driving macro back test breach results would be reviewed and the mitigation action would be considered at the discretion of the Clearing Risk Department. Micro back test statistics in the standard Basel yellow zone not driving macro back test breach results would be considered part of the regular margin update proposals.

The amendments would also make changes in the Monitoring and Reporting section. For Margin Coverage at the macro level, the amendments would state that the Clearing Risk Department would report the top day macro breaches daily (deleting the lengthier manual process previously included) and the breach statistics would be presented monthly at the Model Oversight Committee and bi-monthly at the F&O Product Risk Committee. Accordingly, changes such as deleting references to manual reports being generated would be deleted from the macro back testing section. The process would also be more streamlined with the committee pack sent to the F&O Product Risk Committee, that is sent bi-monthly, including the macro back-test statistics.

Similar amendments would be made to the Margin Coverage section for the micro level. The amendments would broadly state that the Clearing Risk Department would report the top day

micro breaches daily (deleting the lengthier process previously included). The Clearing Risk Department would on a monthly basis generate reporting displaying the statistics of a large selection of products across all parameter types. The detailed micro back testing results would be reported and reviewed monthly by the Clearing Risk Department. The Clearing Risk Department would produce a monthly summary of micro back testing results for material products and margin rates for the Model Oversight Committee. Micro back-testing results would be reviewed on a bimonthly basis at the F&O Product Risk Committee for material products. Certain definitions of materiality for these reviews in the existing Procedures would be removed, as ICE Clear Europe believes a more flexible approach to materiality is appropriate. The amendments would state that any proposed model or parameter remediation actions due to product back testing results would be governed by the Model Risk Policy (specific language regarding the flagging of these remediation actions to senior management and various committees would be deleted as relevant notifications are addressed in the Model Risk Policy). A section and table summarizing the Margin Coverage and Backtest Statistics would be deleted as unnecessary.

The amendments would make changes to the Sensitivity Testing section to add that the daily tests would undergo a monthly review at the material product or account level. They would also add that the Model parameters are described in detail in the relevant ICE Risk Model documentation.

A section on Stress Testing Methodology would be shortened to discuss Stress Testing more generally, in light of the fact that stress testing is addressed in detail in other Clearing House policies and procedures. The amendments would add that the objective of stress testing is to ensure that the F&O Guaranty Fund is adequate to cover the uncollateralized losses arising from the two largest Clearing Member Groups. In addition, the results are used in Stress Margin, Shortfall Margin, and Guaranty Fund sizing and allocation. The amendments would state that the stress tests are performed under extreme but plausible market price moves. The amendments reference the two types of stress scenarios applied by the Clearing House—historical scenarios and theoretical scenarios. The Clearing House conducts daily stress testing on the Clearing Member portfolios, and results are reviewed by the Clearing

Risk Department and escalated as necessary.

The amendments would make revisions to the section on data quality checks and exclusions for dynamic data. A sentence on revisions to EDSs would be moved to the new section on Revisions and Remediations discussed below. In the historical prices discussion, a sentence stating that use of external data would usually be based on a materiality assessment where a product's IM reaches a significant portion of the overall Clearing House IM would be deleted. ICE Clear Europe does not believe it is necessary to specify this particular scenario given its general authority to use external data to run ad hoc analysis.

The amendments would add a new section on Revisions and Remediations in relation to Data Management.

The Remediations section would address what was previously referred to as exclusions and corrections and would outline other factors that could imply that remediation may be necessary. These would include corrections to market prices as a result of corporate actions. Certain other examples (including a footnote related to large moves from M&A announcements) would be removed as unnecessary given the more general authority to engage in remediation of data. Data that is remediated would have to be approved by the Clearing Risk Department (rather than a senior Clearing Risk Department person). In addition, the remediations with related justifications would be reviewed monthly by the Model Monitoring Group.

The amendments would make changes to the Procedure's document governance, breach management and exception handling, to make it generally consistent with other ICE Clear Europe policies. The document owner identified by the Clearing House would be responsible for ensuring that the Procedures remains up-to-date and reviewed in accordance with the Clearing House's governance processes. The document owner would also be responsible for reporting any material breaches or deviations to the Head of Department, Chief Risk Officer and Head of Regulation and Compliance in order to determine if further escalation is required. Exceptions to the Procedures would also be approved in accordance with the governance processes for approvals of changes to the Procedures. The amendments would state explicitly that changes to the Procedures would also have to be approved in accordance with the Clearing House's governance process

and would take effect following completion of required internal and regulatory approvals.

The amendments would also add the aforementioned Appendix summarizing the processes detailed in other parts of the Procedures.

A number of other drafting clarifications and conforming changes such as updating names of relevant persons, committees and departments, replacing and conforming defined terms, and deleting outdated references would also be made throughout the document. Various provisions would also be renumbered or relabeled throughout the Procedures.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the F&O Risk Procedures are consistent with the requirements of section 17A of the Securities Exchange Act of 1934 (the "Act")⁹ and the regulations thereunder applicable to it. In particular, section 17A(b)(3)(F) of the Act¹⁰ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed changes are intended to update the Procedures to make them consistent with other Clearing House policies and to describe current Clearing House practices around margin and guaranty fund determination more accurately. The updates would reflect recent amendments to the Clearing House's Model Risk Policy, which governs key aspects of risk management with respect to models, including margin models. The amendments would also clarify various aspects of the calculation of Core IM and Additional IM (and the components thereof), as well as the process for monitoring intraday changes in conditions and making intraday margin calls when additional margin is required. In general, these amendments will not result in a change of the margin methodology but are intended to more clearly describe and document the methodology. Additionally, a new section would be added to describe, for completeness, key aspects of the sizing of the F&O Guaranty Fund (which is more fully defined in other Clearing

⁹ 15 U.S.C. 78q-1.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

House documentation). The clarifications to the Procedures will thus further overall risk management at the Clearing House with respect to the Futures and Options product category, which would in turn promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The enhanced Procedures are therefore also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the amendments to affect the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.) Accordingly, the amendments satisfy the requirements of section 17A(b)(3)(F).¹¹

The amendments to the Procedures are also consistent with relevant provisions of Rule 17Ad-22.¹² Specifically, Rule 17Ad-22(e)(4)(i) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement process, including by [. . .] [m]aintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence”.¹³ As discussed, the amendments would make certain clarifications to the descriptions of the Clearing House's margin methodology and Guaranty Fund sizing process (including the process for reviewing and adjusting the size of the F&O Guaranty Fund from time to time and the basis for allocating the F&O Guaranty Fund across clearing members). The amendments are not intended to result in changes in those practices or in margin or guaranty fund levels. As such, the amendments are consistent with maintaining sufficient financial resources to cover the Clearing House's credit exposures, within the meaning of Rule 17Ad-22(e)(4)(i).¹⁴

Rule 17Ad-22(e)(6)(i) and (ii) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] [c]over, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system

that, at minimum [. . .] [c]onsiders, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market”¹⁵ and “[m]arks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances”.¹⁶ As set forth above, the amendments to the Procedures would make clarifying changes to the descriptions of practices for collection of both Core IM and Additional IM (and the relevant components thereof). For instance, the amendment clarifies the procedures for determining and promoting production margin rates based on the autopilot rates resulting from standard application of the ICE Risk Model. The amendments would also clarify the process for calculating Additional IM, as well as monitoring intraday change and making intraday margin calls as a result of those calculations. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(6)(i) and (ii).¹⁷

Rule 17Ad-22(e)(6)(vi)(A) and (B) requires that a clearing agency cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management and regularly reviewed by “(A) [c]onducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions”¹⁸ and “(B) [c]onducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of the covered clearing agency's margin resources”.¹⁹ As previously stated, the amendments would make various clarifications and drafting improvements to the description of the review process for back testing at both the micro and macro level for margin coverage. The changes also clarify the periodic review process by the Clearing Risk Department, relevant committees and other relevant personnel. In ICE Clear Europe's view, these amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(6)(vi)(A) and (B).²⁰

Rule 17Ad-22(e)(3)(i) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency”.²¹ The amendments to the Procedures are intended to assist the Clearing House in accurately monitoring and evaluating its credit risk and collecting appropriate margin from its Clearing Members accordingly. Moreover, the amendments would specify the process in reviewing, testing and resizing of the F&O Guaranty Fund. As a result, the Clearing House would be better able to manage the risk of losses that may arise from default by F&O Clearing Members. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(3)(i).²²

Rule 17Ad-22(e)(2) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] [p]rovide for governance arrangements that are [c]lear and transparent”²³ and “[s]pecify clear and direct lines of responsibility”.²⁴ As discussed, the Procedures would clearly state certain responsibilities of the Clearing Risk Department and Model Oversight Committee, among others, in relation to oversight of the Clearing House's practices regarding margin for F&O products and the F&O Guaranty Fund. In line with the Clearing House's other policies and procedures, the Procedures would also describe the responsibilities of the document owner and appropriate escalation and notification requirements for responding to exceptions and deviations from the Procedures. In ICE Clear Europe's view, the amendments to the Procedures are therefore consistent with the requirements of Rule 17Ad-22(e)(2).²⁵

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the F&O Risk Procedures and will apply to all F&O Clearing Members. The

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17 Ad-22.

¹³ 17 CFR 240.17 Ad-22(e)(4)(i).

¹⁴ 17 CFR 240.17 Ad-22(e)(4)(i).

¹⁵ 17 CFR 240.17 Ad-22(e)(6)(i).

¹⁶ 17 CFR 240.17 Ad-22(e)(6)(ii).

¹⁷ 17 CFR 240.17 Ad-22(e)(6)(i) and (ii).

¹⁸ 17 CFR 240.17 Ad-22(e)(6)(vi)(A).

¹⁹ 17 CFR 240.17 Ad-22(e)(6)(vi)(B).

²⁰ 17 CFR 240.17 Ad-22(e)(6)(vi)(A) and (B).

²¹ 17 CFR 240.17 Ad-22(e)(3)(i).

²² 17 CFR 240.17 Ad-22(e)(3)(i).

²³ 17 CFR 240.17 Ad-22(e)(2)(i).

²⁴ 17 CFR 240.17 Ad-22(e)(2)(v).

²⁵ 17 CFR 240.17 Ad-22(e)(2).

proposed amendments are not expected to materially change the margin methodology or the resulting margin levels or requirements for F&O Clearing Members. Similarly, the amendments are not expected to materially change the F&O Guaranty Fund requirements. Accordingly, ICE Clear Europe does not believe the amendments would affect the costs of clearing, the ability to market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act²⁶ and paragraph (f) of Rule 19b-4²⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include file number SR-ICEEU-2023-023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ICEEU-2023-023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ICEEU-2023-023 and should be submitted on or before October 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98406; File No. SR-CBOE-2023-047]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

September 15, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 14, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to modify the fee for the SPX (and SPXW) Floor Market-Maker Tier Appointment Fee.³

By way of background, Exchange Rule 5.50(g)(2) provides that the Exchange may establish one or more types of tier appointments and Exchange Rule 5.50(g)(2)(B) provides such tier appointments are subject to such fees and charges the Exchange may establish. In 2010, the Exchange established the SPX Tier Appointment and adopted an initial fee of \$3,000 per Market-Maker trading permit, per month.⁴ The SPX (and SPXW) Tier Appointment fee for Floor Market-Makers currently applies to any Market-Maker that executes any contracts in SPX and/or SPXW on the trading floor.⁵ The Exchange now seeks to increase the fee for the SPX/SPXW Floor Market-Maker Tier Appointment from \$3,000 per Market-Maker Floor Trading Permit to \$5,000 per Market-Maker Floor Trading Permit.

In connection with the proposed change, the Exchange also proposes to update Footnote 24 in the Fees Schedule, as well as remove the reference to Footnote 24 in the Market-Maker Tier Appointment Fee Table. By way of background, in June 2020, the

Exchange adopted Footnote 24 to describe pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID-19 pandemic.⁶ Among other changes, Footnote 24 provided that the monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee was to be increased to \$5,000 per Trading Permit from \$3,000 per Trading Permit. As the Exchange now proposes to maintain the \$5,000 rate on a permanent basis (*i.e.*, regardless of whether the Exchange is operating in a modified state due to COVID-19 pandemic), the Exchange proposes to eliminate the reference to the SPX/SPXW Floor Market-Maker Tier Appointment Fee in Footnote 24.⁷

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its

Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed fee is reasonable as the Exchange believes it remains commensurate with the value of operating as a Market-Maker on the Exchange's trading floor in the SPX pit, which has the largest physical presence on the Exchange's trading floor. For example, the Exchange recently transitioned from its previous trading floor, which it had occupied since the 1980s, to a brand new, modern and upgraded trading floor facility. The Exchange believes customers continue to find value in open outcry trading and rely on the floor for price discovery and the deep liquidity provided by floor Market-Makers. The build out of a new modern trading floor reflects the Exchange's commitment to open outcry trading and focus on providing the best possible trading experience for its customers, including Market-Makers. For example, the new trading floor provides a state-of-the-art environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. For example, the new trading floor has more than 330 individual kiosks, equipped with top-of-the-line technology that enables floor participants to plug in and use their devices with greater ease and flexibility. The new trading floor provided by the Exchange also provides floor Market-Makers with more space and increased capacity to support additional floor-based traders on the trading floor. Moreover, the new trading floor is conveniently located across the street from the LaSalle trading floor, which resulted in minimal disruption to TPH floor participants, many of whom have office space nearby, including in the same facility in which the trading floor is located. The Exchange believes the new location, which was also home to the Exchange's original trading floor in the 1970s and early 1980s, is also able to support robust trading floor infrastructure as it currently hosts several banks, trading firms and even trading floors (*i.e.*, trading floors for the Chicago Mercantile Exchange and BOX Options Market). The Exchange also believes the relocation to the new trading floor resulted in a streamlined and simplified trading floor and facility fee structure, as further described in the Exchange's proposal to amend certain facility fees in connection with the new

³ The Exchange initially filed the proposed fee change, among other changes, on June 1, 2022 (SR-CBOE-2022-026). On June 10, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-029. On August 5, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-042. On September 26, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-050 to address the proposed fee change relating to the SPX/SPXW Floor Market-Maker Tier Appointment Fee. On November 23, 2022, the Exchange advised of its intent to withdraw that filing and submitted SR-CBOE-2022-060. On January 20, 2023, the Exchange withdrew SR-CBOE-2022-060 and submitted SR-CBOE-2023-008. On March 21, 2023, the Exchange withdrew SR-CBOE-2023-008 and submitted SR-CBOE-2023-016. On May 19, 2023, the Exchange withdrew SR-CBOE-2023-016 and submitted SR-CBOE-2023-028. On July 18, 2023, the Exchange withdrew that filing and submitted SR-CBOE-2023-035. On September 11, 2023, the Exchange withdrew that filing and submitted SR-CBOE-2023-046. On September 14, 2023, the Exchange withdrew that filing and submitted this proposal. Notably, no comment letters were received in connection with any of the foregoing rule filings.

⁴ See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

⁵ The Exchange notes that the fee is not assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees, Notes.

⁶ See Securities Exchange Act Release No. 89189 (June 30, 2020), 85 FR 40344 (July 6, 2020) (SR-CBOE-2020-058).

⁷ The Exchange notes that since its transition to a new trading floor facility on June 6, 2022, it has not been operating in a modified manner. As such Footnote 24 (*i.e.*, the modified fee changes it describes) does not currently apply.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

trading floor.¹¹ The Exchange also notes that it has not sought to pass through a number of costs incurred in connection with the new trading floor, including design, construction and other on-going maintenance costs. The Exchange also intends to offer free coffee and beverages on the new trading floor. Moreover, the Exchange has not modified many of its facilities fees in several years. The Exchange therefore believes the proposed increase to the SPX (and SPXW) Floor Market-Maker Tier Appointment fee is reasonable because the Exchange's investment in its new modern cutting-edge trading floor has improved the quality of the trading floor, particularly to the benefit of SPX Market-Makers as they operate in the largest pit on the new trading floor.

The Exchange further believes the proposal to increase the fee is reasonable as the Exchange has provided further value to Market-Makers by expanding the suite of SPX products available to Market-Makers on the trading floor since 2010 when the SPX (and SPXW) Floor Market-Maker Tier Appointment fee was first adopted. For example, in 2013, the Exchange began listing SPXPM.¹² In 2016, the Exchange began listing SPX Weekly options with Monday and Wednesday expirations.¹³ Most recently in 2022, the Exchange added SPX Weekly options with Tuesday and Thursday expirations.¹⁴ The introduction of these products means SPX options now have an available expiration every trading day of the week, thereby providing Floor Market-Makers with additional opportunities to trade SPX and greater trading flexibility as compared to 2010. Moreover, average daily volume (ADV) in SPX has increased nearly 30%. In particular, Market-Maker open outcry ADV in SPX has increased nearly 15% since 2010. Further, increased ADV, and specifically increased Market-Maker open outcry in SPX provides increased trading opportunities for SPX Market-Makers which the Exchange believes is commensurate with the value of the

proposed increase of the Tier Appointment Fee.

To demonstrate the value the Exchange believes Market-Makers find transacting with SPX on the trading floor (notwithstanding the proposed fee change), Market-Maker presence on the new trading floor in SPX and SPXW has actually increased. Particularly, as of December 30, 2022, there are 12 additional Market-Makers trading SPX and SPXW on the trading floor as compared to May 2022 (which was the month prior to the proposed fee change being implemented on a permanent basis and transition to the new trading floor).¹⁵ Further, in June 2022, the month in which the proposed fee change took effect on the new trading floor on a permanent basis, there were 5 additional Market-Makers trading SPX and SPXW on the trading floor as compared to May 2022. Further, as of December 30, 2022, there are 4 additional Market-Makers trading SPX and SPXW on the trading floor as compared to March 2020, which was the last month the Exchange assessed \$3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee. The Exchange believes the increasing SPX and SPXW Market-Maker presence on the trading floor since the last time the Exchange assessed \$3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee (*i.e.*, March 2020) and since the time the current proposal was submitted (*i.e.*, June 2020) speaks not only to the value Market-Makers find in participating as a Market-Maker in SPX and SPXW on the (new and improved) trading floor, but also to the reasonableness of the fee.

The Exchange finally believes its proposal to increase the SPX (and SPXW) Floor Market-Maker Tier Appointment fee is reasonable as it is the same amount that has been assessed under Footnote 24 for the last three years. Additionally, the Exchange believes its proposal to increase the fee is reasonable as the fee amount has not been increased since it was adopted over 12 years ago in July 2010.¹⁶ Particularly, since its adoption 13 years ago, there has been notable inflation. Indeed, the dollar has had an average inflation rate of 2.6% per year between 2010 and today, producing a cumulative

price increase of approximately 40% inflation since 2010, when the SPX and SPXW Floor Market-Maker Tier Appointment was first adopted.¹⁷ Additionally, for nearly ten years, Market-Makers were only subject to the original rate that was adopted in 2010 (*i.e.*, \$3,000) notwithstanding an average inflation rate of 2.6% per year. The Exchange acknowledges its proposed fee exceeds 40%. However, the Exchange believes such increase is reasonable given many Market-Makers for nearly 10 years did not have to pay increased fees notwithstanding yearly inflation. For example, by not increasing the fee each year to correspond to the average per year inflation rate of 2.6%, Market-Makers trading SPX on the trading floor since 2011 through 2020 (when then Exchange originally increased the fee due to the COVID-19 pandemic) have saved nearly \$10,000. Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. The Exchange therefore believes that proposing a fee in excess of the cumulative 40% inflation rate is still reasonable, especially when considered in conjunction with all of the additional and further rationale discussed above. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a yearly or cumulative inflation rate is unreasonable.

The proposed change is also equitable and not unfairly discriminatory as it applies to all Market-Makers that trade SPX on the trading floor uniformly. The Exchange believes it's reasonable equitable and not unfairly discriminatory to increase the SPX/SPXW floor Market-Maker Tier Appointment fee and not the SPX/SPXW electronic Market-Maker Tier Appointment fee, as Floor Market-Makers are not subject to other costs that electronic Market-Makers are subject to. For example, while all Floor Market-Makers automatically have an appointment to trade open outcry in all classes traded on the Exchange and at no additional cost per appointment, electronic Market-Makers must select an appointment in a class (such as SPX) to make markets electronically and such appointments are subject to fees under the Market-Maker Electronic Appointments Sliding Scale.¹⁸

¹¹ See Securities Exchange Act Release No. 96001 (October 6, 2022), 87 FR 62129 (October 13, 2022) (SR-CBOE-2022-049).

¹² See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE-2012-120).

¹³ See Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR-CBOE-2015-106). See also Securities Exchange Act Release No. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-146).

¹⁴ See Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE-2022-005).

¹⁵ As noted above, the Exchange has been assessing \$5,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee since June 2020 as the Exchange was operating in a modified state until its transition to the new trading floor in June 2022, at which time the Exchange submitted this proposal to make such increase permanent.

¹⁶ See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

¹⁷ See <https://www officialdata.org/us/inflation/2010?amount=1>.

¹⁸ See Cboe Options Rules 5.50(a) and (e). See also Cboe Options Fees Schedule, Market-Maker EAP Appointments Sliding Scale.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all Floor Market-Makers that trade SPX (and/or SPXW). As noted above, the Exchange believes it's reasonable to increase the SPX/SPWX Tier Appointment Fee for only Floor Market-Makers only as opposed to electronic Market-Makers, because electronic Market-Makers are subject to costs Floor Market-Makers are not, such as the fees under Market-Maker EAP Appointments Sliding Scale.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to a fee relating to a product exclusively listed on the Exchange. Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2023-047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-047 and should be submitted on or before October 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023-20426 Filed 9-20-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18118 and #18119; Florida Disaster Number FL-00192]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-4734-DR), dated 08/31/2023.

Incident: Hurricane Idalia.

Incident Period: 08/27/2023 through 09/04/2023.

DATES: Issued on 09/05/2023.

Physical Loan Application Deadline Date: 10/30/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 08/31/2023, is hereby amended to establish the incident period for this disaster as beginning 08/27/2023 through 09/04/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-20504 Filed 9-20-23; 8:45 am]

BILLING CODE 8026-09-P

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

²¹ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18181 and #18182;
New Hampshire Disaster Number NH-00064]

Presidential Declaration of a Major
Disaster for Public Assistance Only for
the State of New Hampshire

AGENCY: U.S. Small Business
Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the
Presidential declaration of a major
disaster for Public Assistance Only for
the State of New Hampshire (FEMA-
4740-DR), dated 09/14/2023.
Incident: Severe Storms and Flooding.
Incident Period: 07/09/2023 through
07/17/2023.

DATES: Issued on 09/14/2023.
Physical Loan Application Deadline
Date: 11/13/2023.
Economic Injury (EIDL) Loan
Application Deadline Date: 06/14/2024.
ADDRESSES: Submit completed loan
applications to: U.S. Small Business
Administration, Processing and
Disbursement Center, 14925 Kingsport
Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:
Alan Escobar, Office of Disaster
Recovery & Resilience, U.S. Small
Business Administration, 409 3rd Street
SW, Suite 6050, Washington, DC 20416,
(202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is
hereby given that as a result of the
President's major disaster declaration on
09/14/2023, Private Non-Profit
organizations that provide essential
services of a governmental nature may
file disaster loan applications at the
address listed above or other locally
announced locations.

The following areas have been
determined to be adversely affected by
the disaster:
Primary Counties: Belknap, Carroll,
Cheshire, Coos, Sullivan.
The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations with- out Credit Available Else- where	2.375
For Economic Injury:	
Non-Profit Organizations with- out Credit Available Else- where	2.375

The number assigned to this disaster
for physical damage is 18181 6 and for
economic injury is 18182 0.

(Catalog of Federal Domestic Assistance
Number 59008)
Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster
Recovery & Resilience.
[FR Doc. 2023-20505 Filed 9-20-23; 8:45 am]
BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18153 and #18154;
Wyoming Disaster Number WY-00072]

Presidential Declaration of a Major
Disaster for Public Assistance Only for
the State of Wyoming

AGENCY: U.S. Small Business
Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the
Presidential declaration of a major
disaster for Public Assistance Only for
the State of Wyoming (FEMA-4739-
DR), dated 09/11/2023.
Incident: Flooding.
Incident Period: 06/15/2023.

DATES: Issued on 09/11/2023.
Physical Loan Application Deadline
Date: 11/13/2023.
Economic Injury (EIDL) Loan
Application Deadline Date: 06/11/2024.
ADDRESSES: Submit completed loan
applications to: U.S. Small Business
Administration, Processing and
Disbursement Center, 14925 Kingsport
Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A.
Escobar, Office of Disaster Recovery &
Resilience, U.S. Small Business
Administration, 409 3rd Street SW,
Suite 6050, Washington, DC 20416,
(202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is
hereby given that as a result of the
President's major disaster declaration on
09/11/2023, Private Non-Profit
organizations that provide essential
services of a governmental nature may
file disaster loan applications at the
address listed above or other locally
announced locations.

The following areas have been
determined to be adversely affected by
the disaster:
Primary Counties: Natrona.
The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations with- out Credit Available Else- where	2.375
For Economic Injury:	

	Percent
Non-Profit Organizations with- out Credit Available Else- where	2.375

The number assigned to this disaster
for physical damage is 18153 6 and for
economic injury is 18154 0.

(Catalog of Federal Domestic Assistance
Number 59008)
Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster
Recovery & Resilience.
[FR Doc. 2023-20496 Filed 9-20-23; 8:45 am]
BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

Delegation of Authority

AGENCY: U.S. Small Business
Administration.
ACTION: Notice of delegation of
authority.

SUMMARY: This document provides the
public with notice of the delegation of
authority for certain activities related to
the licensing of Small Business
Investment Companies by the
Administrator of the Small Business
Administration (SBA) to the Agency
Licensing Committee.

FOR FURTHER INFORMATION CONTACT:
Arthur Spivey, Office of Investment and
Innovation, U.S. Small Business
Administration, 409 3rd Street SW,
Washington, DC 20416; (202) 205-7098
or arthur.spivey@sba.gov.

SUPPLEMENTARY INFORMATION: This
document provides the public with
notice of the Administrator's delegation
of authority to the Agency Licensing
Committee to review and recommend to
the Administrator for approval
applications for licenses to operate as a
small business investment company
under the Small Business Investment
Act of 1958, as amended.

This delegation of authority reads as
follows:
Pursuant to the authority vested in me
pursuant to section 301 of the Small
Business Investment Act of 1958, as
amended, the authority to take any and
all actions necessary to review
applications for licensing under section
301 of the Small Business Investment
Act of 1958, as amended, and to
recommend to the Administrator which
such applications should be approved is
delegated to the Agency Licensing
Committee.
The Agency Licensing Committee
shall be composed of the following
members:

Associate Administrator for Investment and Innovation (Committee Chair)
General Counsel
Associate Administrator for Capital Access
Associate Administrator for Field Operations
Chief Financial Officer
Administrator Appointed Observer(s) *

* Administrator may appoint observers within the agency or from agencies with whom SBA has formally entered into an SBIC interagency partnership initiative through a Memorandum of Understanding or Agreement.

This authority revokes all other authorities granted by the Administrator to recommend and approve applications for a license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. This authority may not be re-delegated; however, in the event that the person serving in one of the positions listed as a member of the Agency Licensing Committee is absent from the office or is unable to perform the functions and duties of his or her position, the individual serving in an acting capacity, pursuant to a written and established line of succession, may serve on the Committee during such absence or inability. In addition, if one of the positions listed as a member of the Agency Licensing Committee is vacant, the individual serving in that position in an acting capacity shall serve on the Agency Licensing Committee. Finally, in the event the Administrator is recused on an application recommended for approval by the Agency Licensing Committee, the Deputy Administrator shall be delegated authority for final ratification. This authority will remain in effect until revoked in writing by the Administrator or by operation of law.

Dated: September 18, 2023.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2023-20495 Filed 9-20-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17852 and #17853; California Disaster Number CA-00380]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA-4699-DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 through 07/10/2023.

DATES: Issued on 09/01/2023.

Physical Loan Application Deadline Date: Filing Period for San Mateo County ends 10/31/2023.

Economic Injury (EIDL) Loan Application Deadline Date: Filing Period for San Mateo County ends 06/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 04/03/2023, is hereby amended to include San Mateo County. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 to request an application. Applications for physical damages may be filed until 10/31/2023 and applications for economic injury may be file until 06/03/2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-20500 Filed 9-20-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18179 and #18180; Vermont Disaster Number VT-00049]

Administrative Disaster Declaration of a Rural Area for the State of Vermont

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative disaster declaration of a

rural area for the State of Vermont dated 09/14/2023.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 07/07/2023 through 07/17/2023.

DATES: Issued on 09/14/2023.

Physical Loan Application Deadline Date: 11/13/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/14/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Addison.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18179 6 and for economic injury is 18180 0.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2023-20498 Filed 9-20-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18183 and #18184;
Illinois Disaster Number IL-00093]

Presidential Declaration of a Major
Disaster for Public Assistance Only for
the State of Illinois

AGENCY: U.S. Small Business
Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the
Presidential declaration of a major
disaster for Public Assistance Only for
the State of Illinois (FEMA-4728-DR),
dated 09/15/2023.

Incident: Severe Storms and Flooding.
Incident Period: 06/29/2023 through
07/02/2023.

DATES: Issued on 09/15/2023.
Physical Loan Application Deadline
Date: 11/14/2023.

Economic Injury (EIDL) Loan
Application Deadline Date: 06/17/2024.

ADDRESSES: Submit completed loan
applications to: U.S. Small Business
Administration, Processing and
Disbursement Center, 14925 Kingsport
Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A.
Escobar, Office of Disaster Recovery &
Resilience, U.S. Small Business
Administration, 409 3rd Street SW,
Suite 6050, Washington, DC 20416,
(202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is
hereby given that as a result of the
President's major disaster declaration on
09/15/2023, Private Non-Profit
organizations that provide essential
services of a governmental nature may
file disaster loan applications at the
address listed above or other locally
announced locations.

The following areas have been
determined to be adversely affected by
the disaster:

Primary Counties: Christian, Clark,
Coles, Cumberland, De Witt,
Douglas, Edgar, Hancock, Macon,
McDonough, Monroe, Morgan,
Moultrie, Pike, Sangamon, Scott,
Vermilion, Warren, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations with- out Credit Available Else- where	2.375
For Economic Injury:	
Non-Profit Organizations with- out Credit Available Else- where	2.375

The number assigned to this disaster
for physical damage is 18183 6 and for
economic injury is 18184 0.

(Catalog of Federal Domestic Assistance
Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster
Recovery & Resilience.

[FR Doc. 2023-20501 Filed 9-20-23; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12184]

Notice of Determinations; Additional
Culturally Significant Objects Being
Imported for Exhibition—
Determinations: “Africa & Byzantium”
Exhibition

SUMMARY: On August 28, 2023, notice
was published on page 58631 of the
Federal Register (volume 88, number
165) of determinations pertaining to
certain objects to be included in an
exhibition entitled “Africa &
Byzantium.” Notice is hereby given of
the following determinations: I hereby
determine that certain additional objects
being imported from abroad pursuant to
agreements with their foreign owners or
custodians for temporary display in the
aforesaid exhibition at The Metropolitan
Museum of Art, New York, New York;
the Cleveland Museum of Art,
Cleveland, Ohio; and at possible
additional exhibitions or venues yet to
be determined, are of cultural
significance, and, further, that their
temporary exhibition or display within
the United States as aforementioned is
in the national interest. I have ordered
that Public Notice of these
determinations be published in the
Federal Register.

FOR FURTHER INFORMATION CONTACT:
Reed Liriano, Program Coordinator,
Office of the Legal Adviser, U.S.
Department of State (telephone: 202-
632-6471; email: section2459@state.gov). The mailing address is U.S.
Department of State, L/PD, 2200 C Street
NW (SA-5), Suite 5H03, Washington,
DC 20522-0505.

SUPPLEMENTARY INFORMATION: The
foregoing determinations were made
pursuant to the authority vested in me
by the Act of October 19, 1965 (79 Stat.
985; 22 U.S.C. 2459), Executive Order
12047 of March 27, 1978, the Foreign
Affairs Reform and Restructuring Act of
1998 (112 Stat. 2681, *et seq.*; 22 U.S.C.
6501 note, *et seq.*), Delegation of
Authority No. 234 of October 1, 1999,
Delegation of Authority No. 236-3 of
August 28, 2000, and Delegation of

Authority No. 523 of December 22,
2021.

Nicole L. Elkon,
Deputy Assistant Secretary for Professional
and Cultural Exchanges, Bureau of
Educational and Cultural Affairs, Department
of State.

[FR Doc. 2023-20418 Filed 9-20-23; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12187]

Notice of Determinations; Culturally
Significant Objects Being Imported for
Exhibition—Determinations:
“Lineages: Korean Art at The Met”
Exhibition

SUMMARY: Notice is hereby given of the
following determinations: I hereby
determine that certain objects being
imported from abroad pursuant to
agreements with their foreign owners or
custodians for temporary display in the
exhibition “Lineages: Korean Art at The
Met” at The Metropolitan Museum of
Art, New York, New York, and at
possible additional exhibitions or
venues yet to be determined, are of
cultural significance, and, further, that
their temporary exhibition or display
within the United States as
aforementioned is in the national
interest. I have ordered that Public
Notice of these determinations be
published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
Reed Liriano, Program Coordinator,
Office of the Legal Adviser, U.S.
Department of State (telephone: 202-
632-6471; email: section2459@state.gov). The mailing address is U.S.
Department of State, L/PD, 2200 C Street
NW (SA-5), Suite 5H03, Washington,
DC 20522-0505.

SUPPLEMENTARY INFORMATION: The
foregoing determinations were made
pursuant to the authority vested in me
by the Act of October 19, 1965 (79 Stat.
985; 22 U.S.C. 2459), Executive Order
12047 of March 27, 1978, the Foreign
Affairs Reform and Restructuring Act of
1998 (112 Stat. 2681, *et seq.*; 22 U.S.C.
6501 note, *et seq.*), Delegation of
Authority No. 234 of October 1, 1999,
Delegation of Authority No. 236-3 of
August 28, 2000, and Delegation of
Authority No. 523 of December 22,
2021.

Nicole L. Elkon,
Deputy Assistant Secretary for Professional
and Cultural Exchanges, Bureau of
Educational and Cultural Affairs, Department
of State.

[FR Doc. 2023-20430 Filed 9-20-23; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12186]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Transatlantic Bridges: Corrado Cagli, 1938–1948” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Transatlantic Bridges: Corrado Cagli, 1938–1948” at the Center for Italian Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DP, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–20433 Filed 9–20–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12185]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Going Dark: The Contemporary Figure at the Edge of Visibility” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Going Dark: The Contemporary Figure at the Edge of Visibility” at the Solomon R. Guggenheim Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DP, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–20431 Filed 9–20–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12188]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Hanne Darboven—Writing Time” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Hanne Darboven—Writing Time” at the Menil Drawing Institute, The Menil Collection, Houston, Texas, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DP, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–20429 Filed 9–20–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0161]

Agency Information Collection Activity: Medical Expense Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0161.”

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0161” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: U.S. Code: 38 U.S.C. 1503; U.S. Code: 38 U.S.C. 1541; U.S. Code: 38 U.S.C. 1543; U.S. Code: 38 U.S.C. 1315.

Title: VA Form 21P–8416, Medical Expense Report.

OMB Control Number: 2900–0161.

Type of Review: Revision of a currently approved collection.

Abstract: *VBA would be unable to properly administer needs-based benefits without this collection of information. The information is collected on an ad hoc basis, and, therefore, cannot be collected less frequently. The form is designed to collect the minimum amount of information which will allow VBA to properly administer the program.*

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 43013 on July 5, 2023, pages 43013.

Affected Public: Individuals and Households.

Estimated Annual Burden: 50,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time, or as needed.

Estimated Number of Respondents: 100,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–20470 Filed 9–20–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0696]

Agency Information Collection Activity Under OMB Review: Availability of Educational Licensing and Certification Records

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0696.”

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email Maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0696” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 10 U.S.C.16136, 38 U.S.C. 3034, 3241, 3323, 3673(d), 3689, 3690 and 38 CFR 21.4209.

Title: Availability of Educational Licensing and Certification Records, OMB #2900–0696.

OMB Control Number: 2900–0696.

Type of Review: Revision of a currently approved collection.

Abstract: The VA uses this information to decide whether Veterans and beneficiaries of educational assistance have been properly paid, and whether educational institutions and organizations, or entities offering approved licensing and certification tests are following the applicable sections of 10 U.S.C. 16136, 38 U.S.C. 3034, 3241, 3323, 3673(d), 3689, 3690 and 38 CFR 21.4209.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 45978 on Tuesday, July 18, 2023, page 45978.

Affected Public: Educational Institutions and Organizations or Entities.

Estimated Annual Burden: 5,242 hours.

Estimated Average Burden Time per Respondent: 2 hours (120 minutes).

Frequency of Response: On Occasion.

Estimated Number of Respondents: 2,621.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–20462 Filed 9–20–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS**Solicitation of Nominations for the Appointment to the Advisory Committee on Tribal and Indian Affairs**

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Office of Public and Intergovernmental Affairs (OPIA), Office of Tribal Government Relations (OTGR), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Tribal and Indian Affairs (“the Committee”) to represent the following Indian Health Service (IHS) Areas: California; Nashville.

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on October 20, 2023.

ADDRESSES: All nomination packages (Application, should be mailed to the Office of Tribal Government Relations, 810 Vermont Ave. NW, Suite 915H

(075), Washington, DC 20420 or emailed to: tribalgovernmentconsultation@va.gov.

FOR FURTHER INFORMATION CONTACT:

Peter Vicaire (Peter.Vicaire@va.gov), Office of Tribal Government Relations, 810 Vermont Ave. NW, Ste. 915H (075), Washington, DC 20420. A copy of the Committee charter can be obtained by contacting Peter Vicaire at 612–558–7744 or accessing the website managed by OTGR at: <https://www.va.gov/TRIBALGOVERNMENT/index.asp>.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include, but are not limited to:

(1) Identify for the Department evolving issues of relevance to Indian tribes, tribal organizations and Native American Veterans relating to programs and services of the Department;

(2) Propose clarifications, recommendations and solutions to address issues raised at tribal, regional and national levels, especially regarding any tribal consultation reports;

(3) Provide a forum for Indian tribes, tribal organizations, urban Indian organizations, Native Hawaiian organizations and the Department to discuss issues and proposals for changes to Department regulations, policies and procedures;

(4) Identify priorities and provide advice on appropriate strategies for tribal consultation and urban Indian organizations conferring on issues at the tribal, regional, or national levels;

(5) Ensure that pertinent issues are brought to the attention of Indian tribes, tribal organizations, urban Indian organizations and Native Hawaiian organizations in a timely manner, so that feedback can be obtained;

(6) Encourage the Secretary to work with other Federal agencies and Congress so that Native American Veterans are not denied the full benefit of their status as both Native Americans and Veterans;

(7) Highlight contributions of Native American Veterans in the Armed Forces;

(8) Make recommendations on the consultation policy of the Department on tribal matters;

(9) Support a process to develop an urban Indian organization confer policy to ensure the Secretary confers, to the maximum extent practicable, with urban Indian organizations; and

(10) With the Secretary's written approval, conduct other duties as recommended by the Committee.

Authority: The Committee was established in accordance with section

7002 of Public Law 116–315

(H.R.7105—Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020). In accordance with Public Law 116–315, the Committee provides advice and guidance to the Secretary of Veterans Affairs on all matters relating to Indian tribes, tribal organizations, Native Hawaiian organizations, and Native American Veterans. The Committee serves in an advisory capacity, making recommendations to the Secretary on ways the Department can improve the programs and services of the Department to better serve Native American Veterans.

Membership Criteria: OTGR is requesting nominations for the current vacancies on the Committee. The Committee is composed of 15 members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including:

(1) At least one member of each of the 12 IHS service areas is represented in the membership of the Committee nominated by Indian tribes or tribal organization.

(2) At least one member of the Committee represents the Native Hawaiian Veteran community nominated by a Native Hawaiian Organization.

(3) At least one member of the Committee represents urban Indian organizations nominated by a national urban Indian organization.

(4) Not fewer than half of the members are Veterans, unless the Secretary determines that an insufficient number of qualified Veterans were nominated.

(5) No member of the Committee may be an employee of the Federal Government.

In accordance with Public Law 116–315, the Secretary determines the number and terms of service for members of the Committee, which are appointed by the Secretary, except that a term of service of any such member may not exceed a term of two years. Additionally, a member may be reappointed for one additional term at the Secretary's discretion.

Professional Qualifications: In addition to the criteria above, VA seeks—

(1) Diversity in professional and personal qualifications;

(2) Experience in military service and military deployments (please identify your Branch of Service and Rank);

(3) Current work with Veterans;

(4) Committee subject matter expertise; and

(5) Experience working in large and complex organizations.

Requirements for Nomination

Submission: Nominations should be typewritten (one nomination per nominator). Nomination package should include: (1) a letter of nomination by an Indian tribe or tribal organization that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone number(s), and email address; (3) the nominee's curriculum vitae or resume, *not to exceed five pages* and (4) a summary of the nominee's experience and qualification relative to the *professional qualifications* criteria listed above.

The individual selected for appointment to the Committee shall be invited to serve a two-year term. All members will receive travel expenses and a per diem allowance in accordance with the Federal Travel Regulations for any travel made in connection with their duties as members of the Committee.

The Department makes every effort to ensure that the membership of its Federal advisory committees is balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, males and females, racial and ethnic minority groups, and Veterans with disabilities are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: September 18, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–20475 Filed 9–20–23; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 88

Thursday,

No. 182

September 21, 2023

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 406 and 435

Streamlining Medicaid; Medicare Savings Program Eligibility Determination and Enrollment; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Parts 406 and 435**

[CMS–2421–F]

RIN 0938–AU00

Streamlining Medicaid; Medicare Savings Program Eligibility Determination and Enrollment**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule.

SUMMARY: This final rule simplifies processes for eligible individuals to enroll and retain eligibility in the Medicare Savings Programs (MSPs). This final rule better aligns enrollment into the MSPs with requirements and processes for other public programs. Finally, this final rule reduces the complexity of applications and reenrollment for eligible individuals.

DATES: These regulations are effective November 17, 2023. Throughout, however, we identify separate compliance dates that vary by provision, thereby giving States additional time to implement the provisions of this final rule.

FOR FURTHER INFORMATION CONTACT: Kim Glaun, (410) 786–3849, kim.glaun@cms.hhs.gov, or Melissa Heitt, (410) 786–2484, melissa.heitt@cms.hhs.gov.

SUPPLEMENTARY INFORMATION: This final rule addresses select provisions and public comments from the proposed rule, published in the September 7, 2022 *Federal Register* (87 FR 54760). We intend to address the remaining provisions and public comments from the proposed rule in subsequent rulemaking.

I. Background

Millions of individuals with limited income and resources rely on the Medicare Savings Programs (MSPs) to help cover Medicare Parts A and B premiums and, often, cost-sharing. In accordance with section 1902(a)(10)(E) of the Social Security Act (the Act), MSPs are part of States' Medicaid programs and assist individuals who need help paying their Medicare costs.

The MSPs are essential to the health and well-being of those enrolled, promoting access to care and helping free up individuals' limited income for food, housing, and other life necessities. Through the MSPs, Medicaid pays Medicare Part B premiums each month for over 10 million individuals and Part

A premiums for over 700,000 individuals. However, millions more are eligible but not enrolled. A 2017 study conducted for the Medicaid and CHIP Payment and Access Commission (MACPAC) estimated that only about half of eligible Medicare beneficiaries were enrolled in MSPs.¹

The Biden-Harris Administration is committed to protecting and strengthening Medicaid. On January 20, 2021, President Biden issued Executive Order 13985, charging Federal agencies with identifying potential barriers that underserved communities may face to enrollment in programs like Medicaid.² This was followed on January 28, 2021 by Executive Order 14009 with a specific call to strengthen Medicaid and the Affordable Care Act and remove barriers to obtaining coverage for the millions of individuals who are potentially eligible but remain uninsured.³ The December 13, 2021 Executive Order 14058, "Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government" supports streamlining State enrollment and renewal processes and removing barriers to ensure eligible individuals are automatically enrolled in and retain access to critical benefit programs.⁴ The April 5, 2022 Executive Order 14070, "Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage" charges Federal agencies with identifying ways to help more Americans enroll in quality health coverage.⁵ It calls upon Federal agencies to examine policies and practices that make it easier for individuals to enroll in and retain coverage. In response to these Executive Orders, we examined ways to improve access to the MSPs.

We have learned through our experiences in working with States and

other interested parties that certain policies continue to result in unnecessary administrative burden and create barriers to enrollment and retention of coverage for eligible individuals. For example, there are no regulations to facilitate enrollment in the MSPs. In particular, we do not have regulations to link enrollment in other Federal programs with the MSPs, despite the high likelihood that individuals in such programs are eligible for the MSPs. This hinders States' ability to efficiently enroll those known to be eligible. Additionally, interested parties report that burdensome documentation requirements substantially impede eligible individuals from enrolling in the MSPs.⁶

In this rulemaking, we finalize policies to streamline MSP eligibility and enrollment processes, reduce administrative burden on States and applicants, and increase enrollment and retention of eligible individuals.

Current regulations at 42 CFR 433.112 establish conditions that State eligibility and enrollment systems must meet to qualify for enhanced Federal matching funds. Among these conditions, § 433.112(b)(14) requires that each State system support accurate and timely processing and adjudications/eligibility determinations. As States submit proposed changes to their eligibility and enrollment systems and implement new and/or enhanced functionality, we will continue to provide them with technical assistance on the policy requirements, conduct ongoing reviews of both the State policy and State systems, and ensure that all proposed changes support more accurate and timely processing of eligibility determinations.

We recognize that the COVID–19 pandemic disrupted routine eligibility and enrollment operations for Medicaid.⁷ As States have resumed

¹ Caswell, Kyle J., and Timothy A. Waidmann, "Medicare Savings Program Enrollees and Eligible Non-Enrollees," The Urban Institute June 2017). <https://www.macpac.gov/wp-content/uploads/2017/08/MSP-Enrollees-and-Eligible-Non-Enrollees.pdf>.

² E.O. 13985, 86 FR 7009. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

³ E.O. 14009, 86 FR 7793. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicare-and-the-affordable-care-act/>.

⁴ E.O. 14058, 86 FR 71357. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/>.

⁵ E.O. 14070, 87 FR 20689. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/05/executive-order-on-continuing-to-strengthen-americans-access-to-affordable-quality-health-coverage/>.

⁶ In October 2020, CMS engaged with 55 interested parties across four States to better understand experiences when applying for the MSPs. One of the main findings was that burdensome documentation requirements substantially impede eligible individuals from enrolling in the MSPs and that easing these requirements is a critical step to ensuring individuals can obtain and retain these critical benefits.

⁷ Under the Families First Coronavirus Response Act (FFCRA, Pub. L. 116–127), States did not terminate enrollment for most individuals who were enrolled in Medicaid as of or after March 18, 2020, as a condition of receiving a temporary increase in the Federal Medical Assistance Percentage. The Consolidated Appropriations Act, 2023 (CAA, 2023, Pub. L. 117–328), enacted on December 29, 2022, ended this Medicaid continuous enrollment condition on March 31, 2023, enabling States to begin the process of initiating Medicaid eligibility reviews as early as February 1, 2023.

routine operations (a process we refer to as “unwinding”) they are faced with the challenge of re-assessing eligibility for a significantly larger number of enrollees than ever before. From February 2020 through March 2023, enrollment in Medicaid increased by 35.3 percent, or over 22 million individuals. Enrollment in Medicaid has increased in every State during that period. At the same time, many States report a shortage of eligibility workers. It is our priority to ensure that renewals of eligibility and transitions between coverage programs occur in an orderly process that minimizes beneficiary burden and promotes continuity of coverage and care.

As we considered the challenges faced by States, we sought comment on reasonable implementation timelines for the provisions in our proposed rule, which would allow States to implement these important policies without negatively impacting the resumption of routine eligibility and enrollment operations. Certain provisions designed to improve the retention of eligible individuals could reduce the likelihood of eligible individuals losing health coverage during unwinding. However, we were also concerned that the work necessary to immediately implement such provisions would divert needed resources away from critical unwinding-related activities.

Recognizing that each State faces a unique set of challenges related to unwinding, with differing needs and opportunities, we sought comment on whether an effective date of 30 days following publication would be appropriate when combined with a later date for compliance for most provisions. We also sought comment on the timeframe that would be most effective for compliance with each provision and whether the compliance date should vary by provision.

In this final rule, we establish compliance dates that allow time for States to fully comply with new requirements while balancing other immediate priorities. Many of the provisions have compliance dates of April 1, 2026, one has a compliance date of October 1, 2024, and provisions that create State options generally take effect on the effective date of this final rule. We encourage States to comply with all new requirements as expeditiously as possible because they will improve access to MSPs for eligible new applicants and improve retention of eligible individuals who are already enrolled in an MSP, while reducing administrative burden on States and individuals.

Finally, implementation of this final rule will complement other new policies to improve access to coverage and affordability of prescription drugs. Beginning January 1, 2024, section 11404 of the Inflation Reduction Act expands eligibility for the full Medicare Part D Low-Income Subsidy benefit. To the extent that this change increases the number of people who apply for the Low-Income Subsidy and are otherwise eligible for (but not yet enrolled in) the MSPs, provisions in this final rule will facilitate access to the MSPs while reducing administrative burdens. And to the extent this final rule improves access to the MSPs, it will also automatically improve access to the Low-Income Subsidy, as we describe later in this final rule. Based on the evidence that Medicare prescription drug subsidies improve access to treatment⁸ and overall access to health insurance improves health outcomes,⁹ our proposals are likely to improve the health of older adults and people with disabilities.

II. Provisions of the Proposed Rule and Analysis of and Response to Public Comments

A. Facilitating Medicaid Enrollment

1. Facilitate Enrollment Through Medicare Part D Low-Income Subsidy “Leads” Data (42 CFR 435.4, 435.601, 435.911, and 435.952)

Medicare Savings Programs and Part D Low-Income Subsidy Background. Under mandatory eligibility groups that are collectively referred to as MSPs, individuals with limited income and resources qualify for Medicaid coverage of Medicare Part A and/or B premiums and, often, cost-sharing. State Medicaid agencies receive applications and adjudicate eligibility for full Medicaid and MSP coverage. Currently, the MSP eligibility groups cover over 10 million low-income individuals. There are three primary MSP eligibility groups:¹⁰ the

Qualified Medicare Beneficiary (QMB) group, through which Medicaid pays all of an individual’s Medicare Parts A and B premiums and assumes liability for most associated Medicare cost-sharing charges for people with income that does not exceed 100 percent of the FPL; the Specified Low-Income Medicare Beneficiary (SLMB) group, through which Medicaid pays the Part B premium for people with income that exceeds 100 percent, but is less than 120 percent, of the FPL; and the Qualifying Individuals (QI) group, through which Medicaid pays Part B premiums for people with income of at least 120 percent but less than 135 percent of the FPL.¹¹ Individuals also must meet corresponding resource criteria to be eligible for an MSP. The income and resource requirements for coverage under the MSPs, and the benefits to which eligible individuals are entitled, are set forth at sections 1905(p)(1) and 1902(a)(10)(E) of the Act. Among other things, section 1905(p) of the Act directs that the income and resource methodologies applied by the Social Security Administration (SSA) in determining supplemental security income (SSI) eligibility per sections 1612 and 1613 of the Act be used to determine financial eligibility for the MSPs, except that States may employ less restrictive income and/or resource methodologies than those applied in determining SSI eligibility under the authority of section 1902(r)(2) of the Act.

As discussed in the proposed rule at 87 FR 54763, the MSPs are essential to the health and economic well-being of low-income Medicare enrollees, helping to free up limited income for food, housing, and other life necessities. Despite the importance of the MSPs, a 2017 study conducted for MACPAC estimated that only about half of eligible individuals enrolled in Medicare were also enrolled in the MSPs.¹² This means

section 1818A of the Act. Section 1818A of the Act permits individuals who became entitled to Part A on the basis of their receipt of Social Security disability insurance (SSDI) and who subsequently lose SSDI after returning to work (and, hence, entitlement to Part A) to enroll in Part A contingent on paying the Part A premiums. The medical assistance available to QDWIs is the coverage of the Part A premiums. The QDWI group is not included in this proposal, because the income limits of the QDWI group are significantly higher than LIS and there does not exist the flexibility to disregard resources that are available for the other MSPs.

¹¹ Unlike a subset of individuals enrolled in the QMB and SLMB groups, no individuals enrolled in the QI group are eligible for other Medicaid program benefits.

¹² Caswell, Kyle J., and Timothy A. Waidmann, “Medicare Savings Program Enrollees and Eligible Non-Enrollees,” The Urban Institute, June 2017. <https://www.macpac.gov/wp-content/uploads/>

⁸ Dusetzina, S. et al., “Many Medicare Beneficiaries Do Not Fill High-Price Specialty Drug Prescriptions,” *Health Affairs*. 41: no. 4 (April 2022): 487–496. <https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2021.01742>.

⁹ Hoffman, Catherine, and Julia Paradise, “Health Insurance and Access to Health Care in the United States,” *Ann. N.Y. Acad. Sci.* 1136 (2008): 149–160. <https://nyaspubs.onlinelibrary.wiley.com/doi/pdfdirect/10.1196/annals.1425.007>.

¹⁰ There is a separate and fourth MSP eligibility group generally referred to as the “Qualified Disabled Working Individuals (QDWI) group,” or QDWI group. As described in section 1902(a)(10)(E)(ii) of the Act, eligibility in the QDWI group is limited to individuals whose incomes do not exceed 200 percent of the FPL; whose resources do not exceed twice the relevant SSI resource standard (that is, for a single individual or couple); and who are eligible to enroll in Part A under

that millions of Medicare enrollees living in poverty are paying over 10 percent of their income to cover Medicare premiums alone, despite being eligible for Medicaid coverage for these costs. Complex MSP enrollment processes contribute to this low participation rate.^{13 14}

The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275, enacted July 15, 2008), aimed to improve low-income benefit programs for Medicare beneficiaries. MIPPA included new requirements for States to streamline enrollment of Medicare Part D Low-Income Subsidy (LIS) program enrollees into the MSPs. This final rule codifies provisions from MIPPA and builds upon its requirements to further streamline MSP enrollment for LIS enrollees and address persistent under enrollment in the MSPs.

The Medicare Part D LIS program, also sometimes referred to as “Extra Help,” is administered by SSA and pays Medicare Part D prescription drug premiums and cost-sharing for over 13 million individuals with low incomes. Most LIS enrollees are deemed eligible for LIS by virtue of their enrollment in Medicaid. Others apply for the benefit by completing an application and submitting it to SSA. Once received, SSA uses the information provided on the LIS application to determine LIS eligibility. Section 1860D–14(a)(3)(C) of the Act directs that the income methodologies for LIS are the MSP income methodologies described in section 1905(p)(1)(B) of the Act (that is, with very narrow exceptions, the SSI income methodologies). Similarly, section 1860D–14(a)(3)(D) and (E) of the Act direct that the resource methodologies for LIS are the MSP resource methodologies described in section 1905(p)(1)(C) of the Act, which are also generally aligned with the SSI resource methodologies, except that the cash value of life insurance, which is typically countable under SSI resource methodologies, is not counted as a resource for LIS. The SSA has also adopted a few additional regulatory and sub-regulatory methodological simplifications for the LIS program that

differ from SSI rules, as explained later in this section of the final rule.

The MSP and LIS programs both assist low-income individuals in accessing the Medicare benefits to which they are entitled and, as described previously in this final rule, generally use a common methodology to determine income and resource eligibility. Current regulations at 42 CFR 423.773(c) require that individuals enrolled in MSPs be automatically enrolled in LIS. However, individuals who are enrolled in LIS are not automatically enrolled in MSPs. Many people enrolled in the LIS program are not enrolled in an MSP, despite likely being eligible. As discussed in the proposed rule at 87 FR 54764, MIPPA included several provisions to promote the enrollment of LIS applicants into the MSPs.

In particular, section 113 of MIPPA requires SSA to transmit data from LIS applications (“leads data”) to State Medicaid agencies, and that the electronic transmission from SSA “shall initiate” an MSP application. MIPPA also requires States to accept leads data and “act upon such data in the same manner and in accordance with the same deadlines as if the data constituted” an MSP application submitted by the individual. As outlined under § 435.912, States have 45 days to make an MSP eligibility determination based on the LIS data. The date of the MSP application is defined as the date of the individual’s application for LIS under section 1935(a) of the Act.

Despite these statutory requirements, not all States initiate an MSP application upon receipt of leads data from SSA. Based on program experience and comments submitted on the proposed rule, some States have been unaware or unclear of the steps required to meaningfully use the leads data to streamline eligibility and enrollment in the MSPs. Our data reflects that currently over a million individuals enrolled in full LIS are not enrolled in an MSP. Given near alignment of MSP and full LIS eligibility criteria, most of these individuals are likely eligible for an MSP eligibility group.

The January 28, 2021 Executive Order on Strengthening Medicaid and the Affordable Care Act directs agencies to address policies and practices that may present unnecessary barriers to individuals and families attempting to access Medicaid coverage,¹⁵ the April 5,

2022 Executive Order on Continuing to Strengthen Americans’ Access to Affordable, Quality Health Coverage charges Federal agencies with identifying ways to help more Americans enroll in quality health coverage,¹⁶ and the December 13, 2021 Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government supports streamlining State enrollment and renewal processes and removing barriers to ensure eligible individuals are automatically enrolled in and retain access to critical benefit programs.¹⁷ As such, we have evaluated CMS’s regulatory authority to reduce barriers to enrollment of eligible individuals into the MSPs. Under the authority in section 1902(a)(4) of the Act to specify “methods of administration” that the Secretary finds to be “necessary for the proper administration” of State plans, we proposed several regulatory changes to promote efficient enrollment in the MSPs by maximizing States’ use of LIS leads data. At 87 FR 54764, we explained that we anticipated these proposals would also have a positive impact on health equity by helping to provide more low-income individuals with access to additional health coverage consistent with the January 20, 2021 Executive Order.¹⁸

Accepting LIS leads data as an MSP application. As discussed in the proposed rule at 87 FR 54764, SSA must transmit the LIS leads data to States, and States must use that data to initiate an application for the MSPs. CMS has reinforced this requirement multiple times.¹⁹

We proposed to codify in regulation the statutory requirements for States to

¹⁶ <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/05/executive-order-on-continuing-to-strengthen-americans-access-to-affordable-quality-health-coverage/>.

¹⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/>.

¹⁸ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁹ See February 18, 2010 State Medicaid Director Letter (SMDL #10–003), “Medicare Improvements for Patients and Providers Act of 2008 (MIPPA),” explaining how to treat leads data as an application for MSPs. <https://www.medicare.gov/federal-policy-guidance/downloads/smd10003.pdf>. We reiterated this 2010 guidance in 2020 in Chapter 1, section 1.6.2 of the Manual for the State Payment of Medicare Premiums, <https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf>, and in the November 1, 2021 Center for Medicaid and CHIP Services Informational Bulletin, “Opportunities to Increase Enrollment in Medicare Savings Programs.” <https://www.medicare.gov/federal-policy-guidance/downloads/cib11012021.pdf>.

2017/08/MSP-Enrollees-and-Eligible-Non-Enrollees.pdf.

¹³ Office of the Assistant Secretary for Planning and Evaluation, “Loss of Medicare-Medicaid Dual Eligible Status: Frequency, Contributing Factors, and Implications,” May 8, 2019. <https://aspe.hhs.gov/basic-report/loss-medicare-medicicaid-dual-eligible-status-frequency-contributing-factors-and-implications>.

¹⁴ Government Accountability Office, “Medicare Savings Programs: Implementation of Requirements Aimed at Increasing Enrollment,” September 2012. <https://www.gao.gov/assets/gao-12-871.pdf>.

¹⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicare-and-the-affordable-care-act/>.

maximize the use of leads data to establish eligibility for Medicaid and the MSPs. At 87 FR 54765, we foresaw that codifying these requirements would lead to more eligible individuals enrolling in MSPs because it was our understanding that some States may have been unaware or unclear of the steps required to meaningfully use the leads data to streamline eligibility and enrollment in the MSPs.

Currently, all States receive leads data from SSA each business day. Per section 113 of MIPPA, States must accept, via secure electronic transfer, the SSA leads data and process that information to initiate an MSP application. However, as discussed at 87 FR 54765, we are aware that several States do not use the leads data to begin the application process. We proposed to add a definition of LIS leads data at § 435.4 and a new paragraph (e) to § 435.911 of the regulations to clearly delineate the steps States must take upon receipt of leads data from SSA. We proposed to define LIS leads data to mean data from an individual's application for low-income subsidies under section 1860D-14 of the Act that the SSA electronically transmits to the appropriate State Medicaid agency as described in section 1144(c)(1) of the Act. We proposed at § 435.911(e)(1) to require States to accept, via secure electronic interface, the SSA LIS leads data. We proposed paragraph (e)(2) to require that States treat receipt of the leads data as an application for Medicaid and promptly and without undue delay, consistent with the timeliness standards at § 435.912, determine MSP eligibility without requiring submission of a separate application.

We proposed paragraph (e)(4) to prevent States from requesting that individuals attest or otherwise provide documentation to establish information contained in leads data, which SSA has already used for the LIS eligibility determination. We noted that a State is not in compliance with the statutory requirement in section 1935(a)(4) of the Act to initiate an application based on leads data or with the proposed regulation if it requires the individual to file a new application for MSP, since the leads data already provides much of the information that would otherwise be requested on an application.

Further, because the LIS leads data that is transferred to State agencies has just been used by the SSA for the LIS determination, State verification of this data prior to adjudicating eligibility is duplicative and inefficient. As such, under the Secretary's authority under section 1902(a)(4) of the Act (relating to establishment of such methods of

administration as the Secretary determines "necessary for proper and efficient administration" of the Medicaid program) and section 1902(a)(19) of the Act (relating to simplicity of administration and the best interests of recipients), we proposed at § 435.911(e)(5) that States be required to accept information that is provided through the leads data without further verification, with certain exceptions, as described below.

However, at 87 FR 54765, we recognized that State Medicaid agencies generally will need to obtain additional information beyond what is provided by the SSA that is necessary to determine eligibility, as some differences remain in income and resource counting methodologies between the LIS and MSPs, as described in more detail in the proposed rule. In addition, as discussed at 87 FR 54765 through 54766, the leads data transmitted to the State does not include information on an individual's citizenship or immigration status, and therefore, States will need to verify their status. In accordance with § 435.406(a) and section 1137(d) of the Act, individuals must make a declaration of U.S. citizenship or satisfactory immigration status (subject to certain verification rules at §§ 435.956 and 435.407 and exemptions for Medicare beneficiaries at § 435.406(a)(1)(iii)(B)).

As such, we proposed at paragraph (e)(3) of § 435.911 that States must obtain additional information needed to make a determination of eligibility for MSPs. We also recommended that when States request additional information from individuals, they include information on how to contact the local State Health Insurance Assistance Program (SHIP) for assistance.

Consistent with existing regulations at §§ 435.907(e) and 435.952(c), we proposed at paragraph (e)(4) of § 435.911 that States may not request that individuals attest or otherwise provide documentation to establish information that SSA has already used for the LIS eligibility determination.

Therefore, in instances in which the leads data would not support a determination of eligibility for MSPs, we proposed at § 435.911(e)(7) to require that States use the information provided by the applicant to SSA through the LIS application process and separately verify the individual's eligibility for Medicaid in accordance with the State's verification policies. Specifically, under proposed § 435.911(e)(7), the State would be required to: (1) determine whether additional information is needed to make a determination of eligibility for an MSP; (2) if additional information is

needed, notify the individual that they may be eligible for assistance with their Medicare premium and/or cost-sharing charges, but that additional information is needed for the agency to make a determination of such eligibility; (3) provide the individual with a minimum of 30 days to furnish any information needed by the agency to determine MSP eligibility; and (4) verify the individual's eligibility for an MSP in accordance with the State's verification plan developed in accordance with § 435.945(j). We noted that, in the case of an applicant who has attested to income or assets over the applicable income or resource standard, States could, but would not be required to, request additional information from the individual to confirm ineligibility for coverage.

Under our proposal, States would continue to be permitted to request from the individual information that is necessary to make an MSP eligibility determination if such information is missing from the leads data and cannot be obtained from other third-party sources consistent with current regulations, and as clarified in our proposed revisions to § 435.952(c). Similarly, States may not reach out to individuals to request information already provided through leads data unless the State has current and reliable information that is not reasonably compatible²⁰ with the leads data. We anticipate such circumstances with respect to financial eligibility would be rare since SSA has already used the leads data for the LIS determination just prior to State use, employing many of the same sources for financial eligibility data relied upon by States.

Finally, individuals eligible for the LIS program may be eligible for full Medicaid benefits, in addition to the assistance with Medicare premiums and cost-sharing available under the MSPs. Under the current regulations at § 435.911, for individuals who submit the single streamlined application for Medicaid on the basis of MAGI, but who may be eligible on a basis other than MAGI, States are required to collect any additional information that is needed to make a determination on a non-MAGI basis, and to make such determination if the individual provides the needed information. Consistent with sections 1902(a)(4) and (a)(19) of the Act, we proposed a similar requirement with

²⁰ Under § 435.952(c)(1), income information obtained through an electronic data match shall be considered "reasonably compatible" with income information provided by or on behalf of an individual if both are either above or at or below the applicable income standard or other relevant income thresholds.

respect to individuals whose applications were initiated by receipt of LIS leads data. Specifically, we proposed new regulatory text at § 435.911(e)(6) to require States to obtain such additional information as may be needed to determine whether individuals whose MSP applications were initiated based on receipt of LIS leads data are eligible for Medicaid in any other eligibility groups (that is, other than the MSPs), including other non-MAGI groups and MAGI-based groups as well. This proposal aimed to codify a pathway for efficient enrollment of LIS enrollees into both the appropriate MSP eligibility group, as well as into a full-benefit group if eligible without imposing undue administrative burdens on States. We anticipated this would also promote program integrity by ensuring enrollment in the appropriate eligibility group. We noted that individuals can be eligible for both an MSP and an eligibility group that confers full Medicaid benefits. Therefore, the requirement under proposed § 435.911(e)(6) was in addition to the requirement to determine the individual's eligibility for an MSP.

We received many comments on our proposals to streamline MSP determinations using LIS leads data, and our responses follow.

Comment: Many commenters applauded CMS efforts to streamline MSP determinations using LIS leads data with this new rule. They noted that large numbers of eligible older adults and individuals with disabilities are missing out on the vital financial and health benefits the MSPs provide and cited burdensome paperwork requirements as a key driver of persistent under-enrollment in these programs for individuals who are eligible for them. They pointed out that, since 2010, Federal statute (MIPPA) has required States to leverage leads data to facilitate MSP enrollment for individuals enrolled in the LIS program, and asserted that CMS's proposal to codify and build upon these requirements is needed to ensure States fully leverage leads data for MSP determinations and to promote greater uniformity among States in application processes and MSP participation rates for individuals enrolled in LIS. MACPAC generally supported these provisions, noting that they would promote MSP enrollment by simplifying eligibility and enrollment processes and would improve health equity by increasing access to care for additional low-income individuals with Medicare.

Response: We thank the commenters for their support. As we stated above,

the MSPs are essential to the health and economic well-being of those enrolled, promoting access to care and helping free up individuals' limited income for food, housing, and other life necessities. We remain committed to increasing participation in these vital programs and foresee that simplifying enrollment processes would help hundreds of thousands of eligible individuals access these critical benefits.

Comment: Some commenters expressed concerns that proposals at new § 435.911(e) to facilitate MSP enrollment through leads data would be burdensome and costly for States. For example, while MACPAC generally supported these provisions, it noted that they would likely increase costs to States and add to their administrative burden. Other commenters relayed concerns with the quality and adequacy of the leads data which they asserted would require additional manual work and system upgrades for States. For that reason, the commenters requested that CMS work with SSA to improve leads data before adopting this proposal. For example, some commenters maintained that because leads data lacks all information necessary for MSP determinations, States must follow up to obtain missing information. In addition, a commenter incorrectly contended that leads income and resource data is unusable because the commenter believed that information appears as a lump sum total, without a breakdown of sources and amounts. A few commenters noted that leads data omits citizenship and immigration status information and requested that CMS and SSA explore adding it in the future.

Response: We appreciate the commenters' perspectives and acknowledge that complying with our proposals to streamline MSP enrollment for LIS recipients could require some States to update their policy, operations, and/or systems—although we project reductions in administrative costs over the long term. We also recognize that increases in MSP enrollment as a result of our proposal could raise costs for States. However, Federal statute (MIPPA) has required States to use leads data to initiate an MSP application since January 1, 2010. Further, as we detailed in the proposed rule at 87 FR 54765, misalignments between the LIS and MSP programs may mean that leads data omits certain data needed to determine MSP eligibility. However, under § 435.911(c)(2), States are already required to obtain additional information for applicants, including LIS applicants whose data has been transferred to the State through the leads data, when current information is

insufficient to make a Medicaid eligibility determination.

With respect to the commenter's contention that LIS leads data only contains undifferentiated total amounts of the individual's income and resources, this is incorrect. We clarify that an individual's leads data record includes a breakdown of income and resources, by source and amounts.²¹ In response to commenters' questions about expanding leads data to include citizenship information, we plan to explore with SSA the feasibility of adding this information in the future, as we foresee it could streamline processes for citizenship-related eligibility under § 435.406 and reduce burden on States and individuals. With respect to the request to add immigration status information to the leads data, we plan to analyze further the feasibility and benefits of such an expansion to streamline eligibility determinations before exploring this step with SSA. In addition, as we reiterate in response to other comments below, if the State already has previously verified this information and it is included in the case record for the individual, the State must not request this information from the individual again in accordance with § 435.956(a)(4)(ii).

Overall, States' comments revealed States' lack of familiarity with the leads data. We also acknowledge that States are engaged in unwinding from the Medicaid continuous enrollment condition, and our proposal adds some new requirements for States, despite the longstanding MIPPA requirements. Therefore, we will provide States more time to comply with these provisions after this final rule's effective date, as explained below. Prior to the compliance date, we plan to focus on providing technical assistance and guidance to States to assist them in achieving full compliance with these provisions.

Comment: While supportive of this codification, a number of commenters urged CMS to pursue concerted monitoring and oversight of States' compliance with their obligations under MIPPA. These commenters reported widespread partial or full non-compliance with leads data requirements by States, including examples of States that lack the system capacity to leverage leads data and States that automatically send individuals identified through LIS leads data an MSP application or instructions on how to complete the process.

²¹ See LIS record. <https://www.ssa.gov/dataexchange/documents/LIS%20record.pdf>.

Response: We appreciate the commenters' support for codifying in regulation the MIPPA requirements for how States must use LIS leads data for determining MSP eligibility and agree with their likely benefits, including clarity and accountability for States. We also agree with the commenters on the importance of effective oversight and monitoring. We intend to implement a robust oversight and monitoring approach, and we are currently exploring options on how best to ensure the LIS leads data provisions are effectively implemented.

Comment: A commenter maintained that codifying MIPPA is unnecessary, stating that States currently use LIS leads data as required. Some commenters also noted that these proposals were already required by MIPPA.

Response: We appreciate the commenters' input but disagree that codifying the MIPPA requirements is unnecessary. As described in the proposed rule (87 FR 54764) and reiterated by commenters and noted previously in this final rule, many States have only partially implemented these requirements, and some have yet to meaningfully do so at all. We believe that codifying the requirements for States will clarify State responsibilities under MIPPA and lead to more States using leads data as required. However, while we are codifying provisions already required by law, we disagree that *all* of our proposals are already required by MIPPA. For example, in our 2010 guidance on implementing MIPPA, State Medicaid Director Letter, #10-003, "Medicare Improvements for Patients and Providers Act of 2008" (the 2010 MIPPA SMDL),²² we advised that States are *permitted* to treat leads as verified for the purposes of MSP determinations. Under our proposal, we would newly require States to accept leads data without further verification unless the State has other information that is not reasonably compatible with the leads data.

Comment: Several commenters supported proposals in § 435.911(e)(4) on accepting leads data as verified if it supports an MSP eligibility determination and § 435.911(e)(5) on refraining from requesting data already in leads data. Commenters noted that these proposals reduce duplication, reduce barriers to enrollment, and streamline the MSP determination process. A commenter stated that requiring States to treat leads data as verified would boost the share of

individuals enrolled in LIS who would also get enrolled into MSPs.

Response: We thank the commenters for their support about accepting leads data as verified and agree that these provisions reduce duplication and barriers to enrollment.

Comment: A few commenters noted their opposition to our proposal to require States to accept leads data as verified without requesting further information from the individual or separate verification by the State. A commenter expressed program integrity concerns, asserting that LIS data is less reliable than other State sources of information. Another commenter explained that its State verification procedures require individuals to produce documentation when State information sources differ from the information the applicant has supplied. The commenter noted that these requirements are stricter than SSA's LIS program procedures which allow SSA to accept an individual's verbal explanation of a discrepancy between income and resources if it is reasonable. A commenter said that CMS's proposal is inconsistent, forcing States to accept leads data as verified if it supports an MSP eligibility determination, but not allowing States to accept leads data as verified if it does not support an MSP eligibility determination.

Response: As noted in the proposed rule at 87 FR 54765, we maintain that accepting leads data as verified and not allowing States to request that the applicant provide information already sent to the State by SSA limits duplication and streamlines the MSP determination process. Additionally, we disagree with the commenters' assertion that the LIS information is inherently less reliable than other State sources of information. As we noted in the proposed rule at 87 FR 54766, States and SSA are pulling electronic data from many of the same sources of information. Additionally, as explained previously in this final rule, if States have other information not reasonably compatible with leads data, they must request additional information from the individual before enrollment.

With respect to the commenter's concerns about the differing requirements when leads data would lead to a denial, we stated in the proposed rule (87 FR 54765) that applying a different verification policy to the use of LIS leads data that supports an MSP eligibility determination versus the use of leads data that would result in an MSP denial is in keeping with provisions of the Computer Matching and Privacy Protection Act (CMPPA, Pub. L. 100-503) at 5 U.S.C. 522a(p)(1).

The CMPPA requires States to take actions to independently verify information that SSA provides before the State may terminate, suspend, reduce, deny, or take other adverse action against an individual.

Comment: A few commenters provided input about the processing of MSP applications under proposed § 435.911(e). A commenter asserted the proposal requires States to process MSP applications 45 days from the date SSA receives the LIS application and requested a longer period to align its LIS and MSP processes to comply. A few commenters questioned what State action is appropriate (for example, a denial of eligibility) if an individual does not return information requested by the State that is absent from the leads data and needed to determine eligibility for the MSPs.

Response: As we discussed in the 2010 MIPPA SMDL, States must treat the date the LIS application is filed with SSA as the date of application for purposes of establishing the effective date of eligibility for MSP benefits. However, States have flexibility regarding the calculation of the 45-day processing timeline under § 435.912(c)(3). States may either use the date that the State receives the LIS leads data from SSA or the date of the LIS application as the start of the calculation of the 45-day processing timeline under § 435.912(c)(3). This policy allows additional time to make this MSP determination based on the LIS leads data, while ensuring MSP coverage is not delayed for eligible individuals. Additionally, we clarify that for MSP applications based on leads data, if an individual fails to comply with a request for information within the requisite time, a State would issue a notice of denial consistent with 42 CFR 431.210 and 435.917(b).

Comment: Some commenters submitted suggestions regarding the proposed new § 435.911(e)(3) that requires States to request additional information that is necessary for the MSP determination. Commenters suggested that CMS require States to collect additional relevant information through a pre-populated form that contains LIS leads data. These commenters maintained that individuals may be more likely to understand and timely respond to a prepopulated form. Further, a commenter stated that while States would generally need to obtain citizenship/immigration status, which is not in leads data, it is likely that many LIS applicants have been enrolled in Medicaid in the past. The commenter recommended that CMS re-emphasize

²² <https://www.medicaid.gov/federal-policy-guidance/downloads/smd10003.pdf>.

that § 435.956(a)(4) requires States to maintain a record of having verified citizenship or immigration status and not re-verify or require MSP applicants to re-verify their status.

Response: We agree that collecting missing information through a pre-populated form may help individuals respond timelier to States' request for additional information. As such, we encourage States to use pre-populated forms as a best practice. At this time, though, we decline to make this a requirement for States because we are interested in providing States some flexibility in carrying out this particular requirement. However, we will consider this recommendation in the future based on program experience. In addition, we agree that § 435.956(a)(4) requires States to maintain a record of previously verified citizenship or immigration status, in accordance with the State's records retention policy in accordance with § 431.17(c). Further, States may not re-verify or require MSP applicants to re-verify citizenship at renewal or subsequent application when such verification is documented in the individual's case record unless the individual has reported a change in citizenship, the agency has received information indicating a potential change, and the individual is not exempt from the requirement to provide documentation of citizenship under § 435.406(a)(1)(iii). We note that consistent with current policy, States may refrain from verifying immigration status for individuals whose particular status is not subject to change if verification of such status is documented in the individual's case record, the individual has not reported a change, and the agency has not received information indicating a potential change.²³

Comment: A few commenters shared feedback on CMS's recommendation that States include information on how to contact the local SHIP when asking individuals for more information to make an MSP determination. Some commenters supported this recommendation, including a commenter that recommended that CMS make it mandatory. These commenters pointed out that SHIPs may be uniquely equipped to provide individuals one-on-one help to explain State communications and how to satisfy the State request for additional information.

Conversely, a commenter shared concerns that SHIPs may lack access to Medicaid systems or have adequate resources to assist individuals. Another commenter opposed this recommendation, asserting that SHIPs are an inappropriate resource because they lack authorization to verify applicant information.

Response: We thank the commenters for their input regarding our recommendation for States to provide contact information for SHIPs when sending information requests for MSP determinations. Our program experience and input from interested parties have indicated that individuals may struggle to understand State communications and complete documentation requests without personalized assistance from eligibility workers or counselors, such as SHIPs.²⁴ As such, we agree with the commenters that SHIPs may be a valuable resource to help individuals comprehend and complete requests for information. We acknowledge that SHIPs may lack the authority to verify data or check Medicaid systems but clarify that States would remain responsible for completing the verification processes. Further, we recognize that State-specific variables, for example, the capacity and willingness of the region's SHIPs to provide this assistance, may affect whether a State Medicaid agency pursues our recommendation to include SHIPs as a resource in their requests for information from MSP applicants. Given all these considerations, we continue to recommend—rather than require—that States include contact information for SHIPs in their requests for additional information.

Comment: Many commenters supported the proposal for States to screen MSP applications from leads data for full Medicaid benefits, indicating it would accelerate and streamline review of Medicaid eligibility for States and lower-income older adults and persons with disabilities who may not be able to separately navigate the Medicaid process. Some commenters further noted that States must screen individuals who apply for MAGI categories upon all bases and that failing to apply a similar “no wrong door” approach to MSP applications based on LIS data would disadvantage individuals who apply through the LIS application as compared to individuals

who apply for MAGI-based Medicaid. These commenters also stated that adopting different screening standards across the MAGI and non-MAGI groups risks potential confusion and duplicative administrative work for State Medicaid agencies.

Many of these same commenters, while supporting this proposal on balance, also expressed concerns that State implementation of the requirement to screen on all bases could undermine the streamlined application and enrollment processes for the MSPs that MIPPA and CMS' proposed changes aim to achieve. Some commenters indicated that requiring a full Medicaid screen could slow down the MSP determination process if CMS does not require States to extend the streamlined income and resource verification rules for the MSPs to non-MAGI groups. They explained that States with different verification rules for other non-MAGI categories must routinely request additional documentation from MSP applicants and might wait to process the MSP application until the applicant provides additional documentation needed for the full Medicaid determination. For these reasons, some commenters requested that CMS clarify that the full Medicaid screen is separate from the MSP enrollment process and that States must not delay the MSP determination and approval for benefits to obtain information necessary for the full Medicaid determination. Similarly, some commenters shared concerns that State communications that combine requests for information missing from leads data and requests for information and disclosures about estate recovery needed for the full Medicaid determination could overwhelm and confuse applicants or give a false impression that estate recovery applies to the MSPs, thus deterring them from completing the MSP application. A commenter suggested that CMS work with States to test different approaches with consumers and develop best practices and options to seek additional information for full Medicaid, making State practices subject to our review. Another commenter suggested that CMS prohibit States from using the same notice to communicate a denial of full Medicaid coverage and a request for information for the MSPs, contending that individuals who receive combined notices are less likely to read and fulfill requests for additional information for the MSPs. A commenter recommended that SSA provide more information related to full Medicaid on the LIS application, including the required rights and responsibilities for the

²³ See final rule titled “Medicaid and Children's Health Insurance Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP” published in the November 30, 2016 *Federal Register* (81 FR 86382, 86428).

²⁴ See for example, CMS Office of Burden Reduction & Health Informatics, “Navigating the Medicare Savings Program (MSP) Eligibility Experience,” April 2022. <https://www.cms.gov/files/document/navigating-medicare-savings-program-msp-eligibility-experience-journey-map.pdf>.

Medicaid program. A few commenters suggested that our proposal would require States to accept leads data as verified for all non-MAGI eligibility groups and requested that CMS explicitly acknowledge this requirement.

Some commenters expressed opposition to the proposal at § 435.911(e)(6) to require States to screen individuals who apply for MSPs through LIS leads data for Medicaid on all bases. They cited some of the same issues identified by those who expressed support, including that because the LIS application does not request the relevant data for full Medicaid determinations or provide rights and responsibilities and required disclosures (for example, an explanation that estate recovery applies to full Medicaid benefits), States would need to follow up with individuals, slowing down and complicating what is intended to be a streamlined process for MSP enrollment. A commenter noted that individuals may not realize that estate recovery applies to full Medicaid benefits since the LIS application does not mention full Medicaid benefits or its implications. A few commenters suggested that screening MSP applications based on leads data for full Medicaid eligibility would in effect require the completion of a full Medicaid application. Another commenter requested that CMS more clearly delineate State requirements to screen MSP applications based on leads data upon all bases. Another commenter requested that CMS clarify the proposed § 435.911(e), contending that the regulation text is disjointed and disorganized, making it unclear what is required for the MSPs versus full Medicaid groups. Similarly, the same commenter stated that CMS is inconsistent in how we refer to the Medicare Savings Programs, sometimes referring to them as the Medicare Savings Programs and other times by referencing section 1905(a)(10)(E) of the Act, for example.

Finally, some commenters, including those opposing and supporting the proposal, shared concerns that screening individuals who apply for the MSPs based on leads data on all bases would require significant policy changes, eligibility systems changes, and/or manual effort for which they would need additional implementation time.

Response: We thank the commenters for feedback about our proposal to require individuals who apply for MSPs through LIS leads data be screened for Medicaid on all bases. In the proposed rule (87 FR 54766), we indicated that

our proposal was consistent with section 1902(a)(4) and (a)(19) of the Act, as it would facilitate the efficient enrollment of LIS enrollees into both the appropriate MSP eligibility group and into a full-benefit group if eligible without imposing undue administrative burden on States. We also noted that the requirement to screen MSP applicants based on leads data was similar to the existing requirement for States to screen individuals who apply for MAGI-based Medicaid on all bases. We still share the view that requiring States to assess such applicants for full Medicaid would facilitate their access to full-scope Medicaid coverage. However, we appreciate commenters' concerns that certain ways of implementing our proposed requirement could potentially undermine the streamlined processes designed to facilitate MSP enrollment using leads data under MIPPA and this final rule.

As commenters cited, the LIS application does not inform individuals that States will screen them on all bases or provide the rights and responsibilities, such as disclosures about estate recovery, that we require for Medicaid applications. Rather, the current LIS application obtains the individual's consent to share their LIS information with the State "to start the application process for the Medicare Savings Programs."²⁵ While it may be possible to add information about full Medicaid eligibility determinations to the LIS application, as a commenter suggested, we are concerned this could make it less likely that individuals complete the LIS application and agree to share their data with the State for an MSP determination.

Under proposed § 435.911(e)(6), States would be required to both promptly complete a determination of eligibility for the MSPs and collect additional information needed to determine whether the individual is eligible for full Medicaid benefits. However, we recognize, after reviewing the comments, that the proposed rule was not clear about all of the steps States would need to make to determine eligibility for full Medicaid benefits, or all of the information they would need to make a determination for, and enroll an individual in, full Medicaid benefits. Specifically, in addition to obtaining additional information regarding eligibility criteria needed by the State for a full Medicaid determination, States would need to obtain the individual's consent to enroll in full Medicaid

benefits, which would also necessitate the State informing an individual who applied for the MSPs through the LIS application about the additional benefits that may be available, the rights and responsibilities associated with enrolling for full benefits, and the potential for estate recovery, which under section 1917(b)(1)(B) of the Act States must employ for Medicaid coverage of long-term care services and supports and related services and can employ for coverage of other Medicaid items and services, not including premium and cost-sharing assistance under the MSPs.

States may also need to reach out to individuals who are applying for the MSPs through the LIS application to obtain additional information that is needed for the MSP determination. We share commenters' concerns that a single communication that requests all of the information needed for the MSP determination and all of the information needed to determine full-benefit eligibility could overwhelm and confuse applicants and reduce their willingness and capacity to complete the steps required for States to make the MSP determination. Further, we agree with commenters that the full-benefit determination should not delay the MSP determination.

After considering all of these factors raised by the commenters, we are revising the proposed regulation at § 435.911(e)(6)(i) and (ii), redesignated at § 435.911(e)(9)(i) and (ii), to specify that the State must provide individuals effectively applying for the MSPs through an LIS application—in addition to and separate from any requests for additional information necessary for the determination of MSP eligibility—(1) information about the availability of Medicaid benefits on other bases, including the scope of such benefits and responsibilities of the individual applying for such benefits; and (2) an opportunity to furnish such additional information as may be needed to determine whether the individual is eligible for such additional Medicaid benefits. Under this final rule, a State may request CMS approval of another approach to ensuring that applicants have the opportunity to receive determinations on whether they are eligible for Medicaid benefits other than through an MSP.

This change to our proposal in response to comments would avoid delays in MSP enrollment and avoid drawbacks associated with modifying the LIS application itself, while still facilitating enrollment in full Medicaid coverage if an individual is eligible. To provide States sufficient time to make a

²⁵ See cover letter, question number 15, and signatures pages in the LIS application. <https://www.ssa.gov/forms/ssa-1020-ocr-sm-inst.pdf>.

full Medicaid determination for individuals applying for the MSPs through the LIS application, for purposes of timeliness standards under § 435.912, the process of obtaining the additional information needed for the full Medicaid determination would begin a new clock for determining timeliness, since the initial transfer of leads data only includes the applicant's authorization to initiate the application process for the MSPs and not full Medicaid.

We encourage (but do not require) States to treat leads data as verified for the full-benefit Medicaid eligibility determination. However, in all cases, the State would still need to describe rights and responsibilities and applicable estate recovery rules, obtain a signature for enrollment, and seek additional information necessary for full Medicaid determinations. Further, in light of the commenter's suggestion to clarify the regulation text, we are revising the regulation text to clarify requirements for States and to use consistent terminology for the MSPs.

Comment: Some commenters suggested that CMS provide technical assistance and education to facilitate enrollment through Medicare Part D LIS leads data. A commenter encouraged CMS to provide technical assistance on issues related to leads data and engage with SSA to ensure data feeds to States are working properly. In particular, a commenter noted that its State began using LIS leads data in March 2021 and requested that SSA and CMS support the State in reconstructing LIS leads data before March 2021 to identify individuals contained in the leads data and to assess them for past eligibility for the MSPs. Another commenter requested that CMS do more to promote alignment between LIS and MSP programs such as by creating State plan amendment (SPA) templates and providing more technical assistance to States to illustrate how to align these methodologies. A commenter also urged CMS to provide States technical assistance on getting attestations over the phone and to encourage States to use telephonic attestations, instead of paper forms, to minimize situations where individuals are denied eligibility for failing to return paperwork. Another commenter urged CMS to provide technical assistance to Medicaid directors and their staff by holding a call or series of calls to address concerns about fraud in self-attestations. A commenter also recommended that CMS allow individuals to submit information through multiple modalities during the application process to support equity and inclusion. Another commenter

recommended that CMS require States to use clear and simple language in the State's notice of the eligibility determination. Finally, a commenter noted that individuals may have had negative experiences with applying for benefits in the past and urged CMS to educate current and potential enrollees about the new, streamlined processes using outreach that is easily understood and accessible.

Response: To the extent that States need support in complying with new requirements under § 435.911(e), or are currently experiencing difficulties understanding, using, or manipulating the leads data, we are available to assist. In response to commenters' concerns, we can also facilitate State discussions with SSA should States require technical assistance to access the leads data files transferred from SSA. (State Medicaid officials can reach us through their dedicated CMS points of contact.) In addition, while SSA does not generally store LIS leads data for past years, we are available to answer questions from States and to assist them when feasible with their data needs. We also are happy to provide technical assistance and best practices to States on using telephonic attestations instead of paper forms and to address concerns about fraud regarding self-attestation. We note that SSA uses telephonic attestations, so Medicare enrollees may be familiar with this procedure already. We appreciate the recommendations on promoting alignment between LIS and MSP programs and will consider these recommendations, including SPA checklists, for future guidance to States. We also appreciate the recommendation about format flexibility during the application process and note that States must already allow individuals to submit information through multiple modalities under § 435.907(a), as explained in the proposed rule (87 FR 54780). Further, in accordance with § 435.917, State eligibility determination notices must be written in plain language and be accessible to individuals with limited English proficiency and disabilities, among other requirements. Finally, we agree with the importance of clear, accessible education and outreach regarding new streamlined MSP provisions and will explore ways to support States with their MSP education and outreach efforts.

Comment: A number of commenters provided feedback regarding the implementation timeline for the proposed provisions to streamline MSP determinations using leads data in new § 435.911(e). Several of these commenters supported a 30-day

implementation timeline, noting that the proposed provisions implement a statutory requirement to use leads data to initiate an MSP application that was enacted over 13 years ago. In contrast, some commenters, both supporting and opposing the leads data proposals, urged CMS to provide significant additional time to implement the proposed requirements in new § 435.911(e) regarding leads data, since most of them constitute new substantive requirements established through this rulemaking under the authority in the leads data provisions under section 113 of MIPPA.

Response: The general requirement to use leads data to trigger an MSP application has been in Federal statute for over 13 years, and its requirements have been interpreted in guidance issued by CMS in 2010,²⁶ 2020,²⁷ and 2021.²⁸ As such, the requirements for States to receive from SSA the LIS leads data and treat it as an MSP application as interpreted in existing guidance continue to apply as they have been applied under that guidance. However, new § 435.911(e) contains numerous new substantive regulatory requirements, and based on commenters' feedback on this proposed rule we foresee that some States will require time to come into compliance with these provisions. Therefore, in response to these comments, we are in this final rule establishing a compliance date for the requirements in new § 435.911(e) of April 1, 2026. Prior to the compliance date, we plan to provide technical assistance and guidance to States as they come into compliance with the new rules.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal at § 435.911(e) with the following modifications:

- We are replacing references to section 1902(a)(10)(E) of the Act with the term the "Medicare Savings Programs" throughout paragraph (e);
- We are adding language to paragraph (e) to clarify that the obligations in this paragraph apply to MSP eligibility determinations for

²⁶ The 2010 MIPPA SMDL. <https://www.medicaid.gov/federal-policy-guidance/downloads/smd10003.pdf>.

²⁷ The Manual for the State Payment of Medicare Premiums, chapter 1, section 1.6.2. <https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf>.

²⁸ Center for Medicaid and CHIP Services Informational Bulletin, "Opportunities to Increase Enrollment in Medicare Savings Programs," November 1, 2021. <https://www.medicaid.gov/federal-policy-guidance/downloads/cib11012021.pdf>.

individuals who have applied for LIS and have granted permission for SSA to share LIS leads data with the Medicaid agency for the purpose of submitting an application for the MSPs;

- We are reordering the paragraphs, revising requirements, and clarifying language as follows:

- ++ Paragraph (e)(1): We are retaining the requirement to accept LIS leads data in paragraph (e)(1) but are removing the term “Low Income Subsidy application data” and using an acronym in place of “Social Security Administration” since “LIS leads data” and “SSA” are now established in paragraph (e);

- ++ Paragraph (e)(2): We are keeping the requirement to treat LIS leads data as an application for the MSPs without requiring submission of another application in paragraph (e)(2), but are moving the requirement regarding timely application processing to paragraph (e)(7).

- ++ Paragraph (e)(3): We are moving the requirement to accept data from SSA, which we are now specifying as LIS leads data for greater consistency in terminology throughout the regulation, without further verification, from proposed paragraph (e)(5) to paragraph (e)(3) and adding that this provision applies unless the State agency has information that is not reasonably compatible with the LIS leads data or the LIS leads data would not support a determination of MSP eligibility;

- ++ Paragraph (e)(4): We are retaining the requirement to not collect information or documentation from the individual in paragraph (e)(4) and are adding that this is unless the State agency has information that is not reasonably compatible with the LIS leads data;

- ++ Paragraph (e)(5): We are moving the requirement to request additional information from proposed paragraph (e)(3) to paragraph (e)(5), replacing the term “request” with the term “seek,” and defining additional information needed for the MSP determination as information that is not in the LIS leads data;

- ++ Paragraph (e)(6): We are moving the requirement to verify an individual’s citizenship and immigration status from proposed paragraph (e)(6)(iii) to paragraph (e)(6), adding a citation to § 435.406, and streamlining the regulation text;

- ++ Paragraph (e)(7): We are moving the requirement regarding timely application processing from paragraph (e)(2) to paragraph (e)(7);

- ++ Paragraph (e)(8): We are moving additional requirements if the LIS leads data does not support a determination of

MSP eligibility from proposed paragraph (e)(7) to paragraph (e)(8).

- ++ Paragraph (e)(9): We are moving and modifying the proposal related to screening for full Medicaid from paragraphs (e)(6)(i) and (ii) to paragraphs (e)(9)(i) and (ii) to require States to provide individuals with—in addition to and separate from any requests for additional information necessary for a determination of Medicare Savings Program eligibility, unless CMS approves otherwise—information about the availability of additional Medicaid benefits on other bases, including the scope of such benefits and responsibilities of the individual applying for such benefits, and an opportunity to furnish such additional information as may be needed to determine whether the individual is eligible for such additional Medicaid benefits.

- Finally, we are applying a compliance date of April 1, 2026 for States to come into full compliance with all the provisions in new § 435.911(e) to facilitate MSP enrollment through LIS leads data.

Streamlining Methodologies. Prior to January 1, 2024, the Federal resource limits for full LIS and the MSPs are the same (\$9,090 for an individual and \$13,636 for a couple in 2023), and the income limits for full LIS and the highest income band MSP (the QI group) are both 135 percent of the FPL. Beginning January 1, 2024, section 11404 of the Inflation Reduction Act (IRA) expands eligibility for the full LIS benefit by revising the statutory income limit to 150 percent of the FPL and increasing the resource limits for full LIS to the resource limits for partial LIS (\$15,160 for an individual and \$30,240 for a couple in 2023). The IRA did not make conforming changes to the income or resource standards for the MSPs.

While the income and resources methodologies for the MSPs and LIS are very closely aligned, certain differences prevent LIS enrollees from being seamlessly enrolled into the MSPs unless the State has elected to align the MSP methodologies with LIS methodologies by adopting certain income and resource disregards under section 1902(r)(2) of the Act. As we discussed in detail in the proposed rule (87 FR 54765), States have the flexibility to achieve full alignment of the MSP and LIS financial methodologies. If States choose to completely align MSP and LIS financial methodologies, they would disregard the following types of income: in-kind support and maintenance, dividend income, and interest income; and the value of the following types of resources: non-liquid

resources, and life insurance. States would also disregard up to \$1,500 in burial funds for an applicant (and an additional \$1,500 for their spouse) that may be co-mingled with other accounts (that is, no longer require such funds are set aside in a separate burial account).

As noted previously in this final rule, States that adopt less restrictive MSP eligibility methodologies to completely align them with the LIS methodologies would be able to use leads data to make a determination of MSP financial eligibility without requesting additional financial information from the individual.²⁹

However, States that have not fully aligned methodologies must determine financial eligibility by requesting additional information not provided through the leads data. In addition, as noted in the proposed rule at 87 FR 54766, if not already contained in the record from a prior application, all States—whether or not they have aligned their MSP financial methodologies with MSP—must request information relating to U.S. citizenship and immigration status to verify such status in accordance with the State’s usual processes in accordance with § 435.406(a) and section 1137(d) of the Act.

In accordance with the authority at section 1902(a)(4) of the Act to promote the administrative efficiency of the program and section 1902(a)(19) of the Act relating to simplicity of administration and the best interests of beneficiaries, we proposed to add a new paragraph (e) to § 435.952 to require that States adopt a number of enrollment simplification policies related to the income and resources that are counted in determining MSP, but not LIS, eligibility that would enable State agencies to use the leads data more efficiently, reduce burden on applicants and States, and increase the number of LIS enrollees successfully enrolled in the MSPs. We also anticipate these policies will have a positive health equity impact by increasing access to Medicare coverage for low-income individuals and increasing the financial security of those who successfully enroll, consistent with the January 20, 2021 Executive Order.³⁰

Finally, we anticipate that these enrollment simplifications will help reduce the high rate of churn (cycling in and out of Medicaid coverage) that

²⁹ Except, as noted previously in this final rule, information on citizenship and immigration status.

³⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

dually eligible individuals experience largely due to administrative reasons such as providing documentation of certain income and assets to demonstrate their continued eligibility. Analyses by the Assistant Secretary for Planning and Evaluation (ASPE) of the Department of Health and Human Services found that almost 30 percent of individuals lost Medicaid eligibility for at least one month during the first year of transitioning to full-benefit dual eligibility and more than 20 percent lost Medicaid eligibility for at least 3 months following the transition despite dually eligible individuals' relatively stable income and assets over time.^{31 32} Experts interviewed noted that dually eligible individuals most often lost coverage because of failing to comply with administrative requirements as opposed to changes in income, assets, or functional status. We discuss our proposed simplifications for each source of income and resource below.

We received comments on our proposals to align the MSP and LIS programs in general, and our responses follow.

Comment: Many commenters supported CMS's proposed alignments of MSP and LIS programs in general, citing that the proposed changes would allow States to use LIS leads data more efficiently, increase MSP enrollment for LIS enrollees, have a positive health equity impact, and reduce churn for all dually eligible individuals. Many commenters explained that procedural hurdles, particularly documentation requirements, are among the main reasons eligible individuals fail to complete the enrollment process or that benefits are delayed for individuals who manage to complete the process. A commenter explained that collecting paper records is particularly overwhelming for low-income individuals, who disproportionately have unstable housing, low literacy, limited access and proficiency in internet usage, limited proficiency in English, and live with disabilities and chronic conditions. The commenter stated that adopting measures to reduce these unnecessary impediments falls squarely within CMS's legal authority. MACPAC supported this proposal, noting consistency with its June 2020

recommendations to Congress to align MSP and LIS income and resource requirements. A few commenters shared that their States are moving toward complete alignment of LIS and MSPs and expressed support for CMS's proposal to determine individuals eligible for the MSPs based on LIS data without seeking additional information if the LIS and MSP programs are completely aligned.

Response: As discussed in the proposed rule (87 FR 54766 & 54767), we anticipate that streamlining income and resources verification processes and improving alignment between the LIS and MSP programs will allow States to employ LIS data more effectively, reduce churn for dually eligible individuals, and increase the percentage of LIS enrollees who are enrolled in the MSPs, resulting in significant economic and health benefits and promoting health equity for low-income Medicare beneficiaries. For that reason, as explained in the proposed rule (87 FR 54766 and 54767), adopting enrollment simplifications for income and resources that are relevant to MSP determinations, but not LIS, implements our authority at section 1902(a)(4) of the Act to promote the administrative efficiency of Medicaid and section 1902(a)(19) of the Act regarding simplicity of administration and the best interests of beneficiaries. We also appreciate that some States are moving toward full alignment, which we recommended in the proposed rule (87 FR 54765). We believe that full alignment of financial eligibility rules for LIS and the MSPs is the most efficient means for States to maximize leads data and improve participation in the MSPs for LIS enrollees.

Comment: A number of commenters noted that the proposals would create different verification processes for the MSPs than for other Medicaid groups. Some commenters opposed applying different verification processes for the MSPs on the grounds that it would be administratively challenging and cause confusion and delays. Both the commenters that generally opposed and the commenters that generally supported our proposals expressed concerns that creating a separate process for the MSPs could require significant system modifications. A commenter, while supporting the proposals at new § 435.952(e) to simplify income and resources verification procedures for MSP determinations, suggested that CMS consider adopting these requirements through sub-regulatory guidance to allow States flexibility to adopt less restrictive income and resource methodologies.

Response: We generally agree with the aim of providing uniform eligibility and enrollment processes, and we are committed to ensuring their operational feasibility. However, many States already apply different rules to the MSPs than other non-MAGI populations. For example, many States have adopted disregards that effectively raise or remove the resource test for the MSPs only. Therefore, we conclude that applying separate rules for the MSPs is not an insurmountable barrier to effective implementation.

Further, in addition to comments on the proposed rule, feedback from interested parties and program experience demonstrate that documentation requirements seriously hinder the ability of eligible individuals to enroll in the MSPs, with significant economic and health impacts for individuals.³³ Reducing the burden on applicants to produce certain types of documentation prior to enrollment is warranted to meaningfully address documented under-enrollment in these programs. Through this final rule, we are allowing additional time for States to update State procedures and systems, as discussed below. In addition, with respect to the commenter's concerns that our regulations at § 435.952(e) may impede State flexibility to relax MSP eligibility requirements, we clarify that they would not impede State's ability to adopt more liberal income and resource methodologies under 1902(r)(2) of the Act.

Comment: Several other commenters opposed CMS's alignment of MSP and LIS programs, asserting that requiring States to accept self-attestation would lead to fraud. A commenter cited difficulties with having their State legislature approve self-attestations due to program integrity concerns. Another commenter requested clarification regarding how reasonable compatibility standards would apply to resources obtained through electronic sources. In addition, a commenter, while supporting CMS proposals to require self-attestation of certain income and resources for the MSPs, requested that Federal audit protocols exempt States from penalties for errors related to self-attestation.

Response: As stated elsewhere, self-attestation is an acceptable means of verification, and we note that many States have incorporated self-attestation

³¹ Assistant Secretary for Planning and Evaluation (ASPE), "Loss of Medicare-Medicaid dual eligible status: Frequency, contributing factors and implications" May 2019. <https://aspe.hhs.gov/system/files/pdf/261716/DualLoss.pdf>.

³² CMS completed an updated internal analysis of ASPE's study in 2021 using data from 2015–2018 that shows that dually eligible individuals continue to lose Medicaid at a high rate in their first year due to administrative reasons.

³³ See for example, CMS Office of Burden Reduction & Health Informatics, "Navigating the Medicare Savings Program (MSP) Eligibility Experience," April 2022. <https://www.cms.gov/files/document/navigatingmedicare-savings-program-msp-eligibilityexperience-journey-map.pdf>.

into their Medicaid verification plans. We also reiterate that, prior to enrollment, States must seek additional information if the self-attested information is not reasonably compatible with State information and that States retain the option to verify self-attested information after the individual has been enrolled. We plan to address the commenter's question about how reasonable compatibility standards would apply to resources obtained through electronic sources in future rulemaking concerning the remaining provisions in the proposed rule published in the September 7, 2022 **Federal Register**.

Regardless of whether a State legislature objects to self-attestation as a means of verification, States are still required to follow Federal regulations. Further, as noted at 87 FR 54765, States also have the ability to align the MSP and LIS income and resource methodologies, which would remove the need for States to separately verify income and/or resources that are missing from leads data. In response to the question about Federal audits, we reiterate that we conduct audits based

on Federal statutory and regulatory requirements. To the extent that we review compliance with § 435.952(e), we would identify an error if a State has failed to comply with this provision and would not identify an error if the State is complying with this requirement.

Comment: A few commenters sought clarifications or additional CMS action. For example, a commenter requested clarification on why MSP and LIS income and resources standards are only aligned until January 1, 2024. Another commenter requested that CMS require States to adopt verification plans for the MSPs and other non-MAGI groups. A different commenter requested that CMS provisions to promote MSP enrollment and retention extend to the Programs of All-Inclusive Care for the Elderly (PACE) for individuals dually entitled to Medicare and Medicaid.

Response: Prior to January 1, 2024, Federal resource limits for full LIS and the MSPs are aligned, and the income limits for the full LIS benefit and the highest band MSP (the QI group) are the same. Section 11404 of the IRA expanded eligibility for the full LIS benefit beginning January 1, 2024, but

did not make any conforming changes for the MSPs. Starting January 1, 2024, individuals who previously were eligible only for partial LIS benefits may be eligible for full LIS benefits under the changes enacted under the IRA. This is because the resource limit for full LIS will increase to the current partial LIS resource limit (\$15,160 for an individual and \$30,240 for a couple in 2023).

While more individuals will qualify for full LIS beginning in 2024, and many full LIS enrollees will continue to qualify for the MSPs, beginning in 2024 there will be more full LIS enrollees who do not qualify for the MSPs. This is because the MSP resource limit will remain unchanged. Also, while the income threshold for full LIS will increase to 150 percent of the FPL beginning in 2024, the Federal income threshold for the QI group will remain at 135 percent of FPL. While we acknowledge that the income and resource limits for full LIS and MSPs will no longer align after January 1, 2024, we still expect that the methodological changes that we are finalizing in this final rule will result in streamlined enrollment into MSPs.

TABLE 1—COMPARISON OF MSP AND LIS INCOME AND RESOURCE LIMITS *

	Income limit	Resource limit
QMB	≤100% FPL	3 × SSI limit adjusted for inflation per section 1905(p)(1) of the Act.
SLMB	>100% FPL, but <120% FPL	same as QMB.
QI	≥120% FPL, but <135% FPL	same as QMB.
Full LIS before 2024	<135% FPL	same as QMB.
Full LIS beginning 2024	<150% FPL	\$15,160—Individual. \$30,240—Couple plus inflation.**

* These are the standard Federal income limits and resources. All of these income limits include a standard \$20 disregard. States may use authority under section 1902(r)(2) of the Act to implement income and/or resource methodologies that are more generous than the Federal baseline for QMB, SLMB, and QI.

** The LIS resource methodology as of January 1, 2024 is no longer tied to the 3 × SSI resource limit, which is a lower rate, but is instead tied to a flat dollar amount of \$10,000 for an individual and \$20,000 for a couple from 2006 and indexed for inflation every year. The rate listed is the 2023 rate, which will need to be adjusted upward by inflation for 2024.

In addition, we clarify that, in accordance with § 435.945(j), States must already adopt verification plans for all Medicaid eligibility groups, including the MSPs and other non-MAGI groups. Finally, we note that our proposals would apply to current and potential PACE participants.

Interest and Dividend Income. Regulations governing LIS eligibility determinations at 20 CFR 418.3350(d) exclude all interest and dividend income earned on resources owned by the applicant or their spouse. However, under the SSI income methodologies applicable to MSP determinations, States must count interest and dividend income unless they have elected to

disregard such income under section 1902(r)(2) of the Act and § 435.601(d).

In the proposed rule (87 FR 54767), citing reports from interested parties and program experience, we noted that the vast majority of individuals likely to qualify for an MSP eligibility group do not have significant interest or dividend income, whereas the requirement to timely obtain and furnish acceptable statements from financial institutions, sometimes extending back over a lengthy period of time, to document interest and dividend income earned is unduly burdensome for applicants and provides negligible program integrity value. Therefore, consistent with section 1902(a)(19) of the Act, to minimize undue administrative burden on

applicants, we proposed at § 435.952(e)(1)(i) and (ii) to prohibit States from requesting documentation of dividend and interest income prior to making a determination of MSP eligibility, except when the agency has information that is not reasonably compatible with the applicant's attestation. Under the proposed rule, States would be required to accept self-attestation of dividend and interest income for MSP applicants and their spouse, but would retain the option to verify such income after the individual has been enrolled (a process, currently available at State option with respect to most eligibility criteria, which we refer to as "post-enrollment verification"), including the option to require the

individual to provide documentation of interest or dividend income if electronic verification is not available.

We received comments on our proposal to streamline eligibility and verification processes for dividend and interest income, and our responses follow.

Comment: A few commenters indicated particular support for this provision, explaining dividend and interest information is often difficult for applicants to obtain and constitutes an unnecessary administrative burden for applicants. One commenter noted an example in which an applicant was required to provide dividend verification based on a report from the IRS of a total annual dividend of under \$5 on a single share of stock of a former employer worth less than \$50. The agency required documentation verifying both the value of the asset and the amount of the dividend. According to the commenter, the process of clarifying the source of the dividend at issue and then obtaining documentation of the share, its current value, and the dividend payment history for the last year took several months, even with the assistance of an advocate, significantly delaying completion of the application and receipt of benefits. Lastly, another commenter requested clarification about whether consideration of interest income applies only to screening MSP applications from LIS leads data or to eligibility determinations for all individuals who apply for MAGI-based groups.

Response: Self-attestation minimizes undue administrative burden on applicants who are unlikely to have investments large enough to generate significant interest or dividend income and resources and still satisfy the resource test for the LIS or MSP benefit. States retain the option to verify the information from the self-attestation after the individual has been enrolled, including requiring the individual to provide documentation of interest or dividend income if electronic verification is unavailable.

With respect to the commenter's requests for clarifications for how consideration of interest income applies to MAGI groups, we believe the commenter was referring instead to whether this provision requiring self-attestation of interest and dividend income applies to all individuals applying to MSP or only those who use the LIS process to apply. As such, we clarify that our proposal regarding required self-attestation for MSP eligibility determinations applies regardless of whether an individual applies for an MSP directly through the

Medicaid agency or indirectly through the LIS pathway. Additionally, we note that interest and dividend income is currently counted in both MAGI and non-MAGI eligibility determinations.

After considering the comments we received and for the reasons outlined in the proposed rule under § 435.952(e)(1)(i) and (ii) and our responses to comments, we are finalizing our proposal on self-attestation for interest and dividend income, except with a modified compliance date of April 1, 2026.

Post-eligibility Verification. We also sought comment on the utility of post-enrollment verification and whether it results in unnecessary procedural denials of eligible individuals. If a State chooses to conduct post-enrollment verification checks, under proposed § 435.952(e)(1)(iii) it must allow individuals at least 90 calendar days to respond to requests for documentation. We sought comment on the proposal to require that States provide individuals with at least 90 calendar days to respond to requests for additional information in this situation and whether States should be required to provide, at a minimum, a shorter period of time, such as at least 30 or 60 calendar days. If a State found that an individual has income exceeding the income standard during the post-enrollment verification process, the State would take appropriate action consistent with regulations at § 435.916(d), which we proposed to redesignate and revise at § 435.919 in the proposed rule, including determining eligibility on other potential bases and, if not eligible on any basis, providing advance notice and fair hearing rights prior to terminating MSP coverage. We note that, consistent with current policy, when a State has information that is not reasonably compatible with the applicant's attestation of the value of any interest or dividend income, proposed § 435.952(e)(1)(ii) would require the State to seek additional information in accordance with § 435.952(c)(2), prior to enrolling the individual in Medicaid.

We received the following comments on post-enrollment verification, including the timeline for responding to requests for additional information, and our responses follow.

Comment: Some commenters requested CMS minimize post-enrollment verification as much as possible because it would be too burdensome and confusing for individuals and may lead to terminations for eligible individuals. A few commenters requested that CMS provide model notices to States because

requests for information can cause confusion or be missed by individuals who have just been approved for benefits. A commenter also requested that States include information in these post-eligibility verification notices on disputing errors. A few commenters requested clarification on how post-enrollment verification would affect eligibility for long-term care services and if a denial would trigger benefit recovery. Other commenters indicated the process would be too burdensome for States and, therefore, opposed requiring States to adopt post-eligibility verification.

Response: We acknowledge that post-enrollment verification, like other requests for additional information/documentation, could pose a burden to individuals. However, to allow self-attestation of income and resources needed for MSP eligibility determinations but missing from leads data, we believe it is essential to provide States a mechanism to ensure program integrity. To help minimize burden and assist States in making beneficiary notices as comprehensive and clear as possible, we will explore providing model language for State communications regarding post-enrollment verification, including the instructions about disputing errors contained in the post-enrollment verification notice. With regard to the commenters' recommendation that post-eligibility verifications be optional, we note that we did not propose making this mandatory for States. In response to the commenter's question about how post-eligibility verification may affect beneficiary coverage for long-term care services, we clarify that our proposal only requires self-attestation for the MSPs and not other non-MAGI groups.

Comment: A number of commenters provided feedback on the proposed 90-day minimum deadline for individuals to return information requested by a State. Several commenters supported providing at least 90 calendar days for individuals to respond with the requested information, citing longstanding barriers to verification for individuals. However, a commenter observed that 90 days was too long based on their State's experience using a 90-day timeline to resolve income discrepancies. The commenter noted that individuals forgot to supply the requested information as a result of the prolonged timeline and recommended 30 days instead. Another commenter opposed a 90-day timeline for post-enrollment verification because it could lead to 3 months of improper payments. Another commenter, while supporting the option for post-eligibility

verification, sought clarification on whether States would need to recoup Medicaid provider payments for an individual for whom the State had accepted self-attestation prior to enrollment and then determines ineligible through post-eligibility verification.

Response: We thank the commenters for their input on the appropriate minimum timeframe for individuals to respond to requests for information following enrollment. We do not agree with commenters that the 90-day timeframe is excessive given the challenges low-income individuals encounter in obtaining and furnishing paperwork, as described throughout this final rule and by commenters. Our position is also informed by our program guidelines and experience related to resolving income data matching issues (DMIs) following determinations of eligibility for Advance Premium Tax Credits (APTC) for the Exchanges that use the Federal eligibility and enrollment platform. A 90-day period aligns with the minimum deadline for individuals to respond to Exchange requests for additional information under 45 CFR 155.315(f)(2)(ii). We note that in the April 2023 final rule titled “Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024” (2024 Payment Notice) published in the **Federal Register** (88 FR 25740), we adopted an automatic 60-day extension for individuals applying for coverage through Exchanges who failed to respond in the 90-day period. We adopted that change in the 2024 Payment Notice after observing that income DMI data indicates that when consumers receive additional time, they are more likely to successfully provide documentation to verify their projected household income. Between 2018 and 2021, over one third of consumers who resolved their income DMIs on the Exchange did so in more than 90 days. We also note that the Exchanges that use the Federal eligibility and enrollment platform send reminders to consumers through multiple modalities to prompt them to timely furnish the required information.

In response to the commenters’ concerns about the potential for increasing improper payments, we note that self-attestation is an acceptable means of verification and that many States have incorporated it into their verification policies as a generally reliable alternative to requiring applicants to produce documentation. As such, the period during which an individual would be enrolled in an MSP

based on self-attestation that proved to be incorrect would not be an improper payment, nor would an individual be subject to administrative benefit recovery if they are later found to be ineligible. In addition, we clarify that States would not administratively recoup payments already made on behalf of individuals if post-eligibility verification processes establish that the individual is ineligible for the MSPs. If a State suspects that an individual committed fraud or abuse in order to obtain or maintain MSP eligibility, the State should follow the processes described at 42 CFR part 455, subpart A of the regulations.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal to require States that choose to conduct post-eligibility verification to provide individuals with at least 90 calendar days to respond to requests for additional information, with a modified compliance date of April 1, 2026.

Non-liquid resources. For LIS eligibility determinations, under 20 CFR 418.3405, SSA only counts liquid resources, which it defines as cash, financial accounts, and other financial instruments that can be converted to cash within 20 business days. Non-liquid resources, such as an automobile, are not counted for LIS eligibility.³⁴ However, MSP determinations generally use a broader definition of countable resources that includes non-liquid resources; for example, while one automobile is excluded for resource-eligibility purposes, a second automobile is countable. As we noted in the proposed rule at 87 FR 54768, this can be onerous for MSP applicants because it can be difficult to timely determine, and furnish acceptable documentation of, the value of something that cannot easily be sold.

Similar to interest and dividend income, consistent with section 1902(a)(19) of the Act and to minimize administrative burdens on individuals, we proposed at § 435.952(e)(2)(i) to require that States accept applicants’ attestation of the value of any non-liquid resources, except, as described at proposed § 435.952(e)(2)(ii), when the State has information that is not reasonably compatible with the individual’s attestation. As with dividend and interest income, proposed § 435.952(e)(2)(ii) clarifies that States must request documentation prior to

making an initial determination of eligibility if they have information that is not reasonably compatible with the applicant’s attestation in accordance with § 435.952(c)(2). However, as with dividend and interest income, States would retain the option to conduct post-enrollment verification, including the option to require the individual to provide documentation of non-liquid resources if electronic verification is not available, and to take appropriate action, consistent with regulations at § 435.916(d), which we proposed to redesignate and revise at § 435.919 in the proposed rule, if the State determines the individual greatly undervalued or failed to disclose resources. If the agency elects to conduct verifications post-enrollment, and documentation is requested, we proposed that the agency must provide the individual with at least 90 calendar days from the date of the request to respond and provide any necessary information requested.

We received comments on our proposal to require States to accept self-attestation on non-liquid assets and prohibit States from requesting documentation except where the agency has information incompatible with a self-attestation, and our responses follow.

Comment: In addition to several commenters expressing general support for self-attestation for simplifying enrollment regarding income, one commenter supported the proposal on non-liquid assets because this information is often difficult for applicants to obtain and poses unnecessary administrative burdens on applicants.

Response: Self-attestation minimizes undue administrative burden on applicants, including identifying the value of a non-liquid asset that cannot be sold. States retain the option to verify the information from the self-attestation with new information after the individual has been enrolled, including requiring the beneficiary to provide documentation of non-liquid resources if electronic verification is not available, and take appropriate action if the State determines the individual greatly undervalued or failed to disclose resources.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal on non-liquid assets with a modified compliance date of April 1, 2026.

Burial funds. Under section 1613(d)(1) of the Act, which applies to both LIS and MSP determinations, up to

³⁴ The exception to this rule is that the equity value of any real property than an individual owns other than the individual’s primary place of residence is counted as a resource.

\$1,500 in burial funds are to be excluded for the applicant (and an additional \$1,500 for their spouse) so long as the burial fund is “separately identifiable and has been set aside.” The statute does not, however, prescribe how the funds must be separately identifiable. As discussed in the proposed rule at 87 FR 54768, current SSA policy allows LIS applicants to attest to having \$1,500 in burial funds, which may be co-mingled with other funds in a single account, but for MSP eligibility determinations States typically require applicants to provide documentation that their burial funds are set aside in a separate account. This creates a misalignment between LIS and MSP methodologies and imposes additional burdens on MSP applicants.

We proposed at § 435.952(e)(3)(i) to require that States, when determining eligibility for the MSPs, allow individuals to self-attest that up to \$1,500 of their resources, and up to \$1,500 of their spouse’s resources, are set aside as burial funds in a separate account, and therefore, are not countable as resources for MSP determinations. Proposed § 435.952(e)(3)(ii) clarifies that States must request documentation prior to making an initial determination of eligibility if they have information that is not reasonably compatible with the applicant’s attestation in accordance with § 435.952(c)(2). As in the proposed provisions for interest and dividend income and non-liquid resources, and described at § 435.952(e)(3)(iii), States would retain the option to conduct post-enrollment verification, including requiring documentation of resources in burial funds, and taking appropriate action, consistent with regulations at § 435.916(d), which we proposed to redesignate and revise at § 435.919 in the proposed rule. Under proposed § 435.952(e)(1)(iii), if the agency elects to conduct verifications post-enrollment and requests documentation, the agency must provide the individual with at least 90 calendar days from the date of the request to respond and provide any necessary information requested.

Finally, States may also use authority at section 1902(r)(2) of the Act to disregard all or a greater amount of burial funds or to not require that the burial funds be held in a separate set-aside account.

We received comments on our proposals related to burial funds, and our responses follow.

Comment: A few commenters specifically wrote in support of accepting self-attestation for burial funds. A commenter suggested that the rule be revised so that applicants are not

required to maintain a separate account for burial funds or that they can acknowledge in their self-attestation that they will set up a separate account within 90 days of the self-attestation. This commenter also noted that low-income individuals are disproportionately “unbanked” and thus do not have access to banks where they can segregate funds in separate accounts.

Response: Self-attestation minimizes undue administrative burden on applicants. States retain the option to verify the information from the self-attestation after the individual has been enrolled, including requiring the beneficiary to provide documentation of burial fund resources and take appropriate action if the State determines the individual greatly undervalued or failed to disclose resources. We appreciate the commenter’s concern that creating a separate account poses additional burdens on applicants, including those who are “unbanked.” However, as described previously in this final rule, section 1613(d)(1) of the Act stipulates that the burial fund exclusion applies to funds that are “separately identifiable” and have been “set aside.” Accordingly, in this final rule, we decline to incorporate the commenter’s suggestions to require States to eliminate the requirement for a separate account for burial funds. We also decline to allow 90 days post self-attestation to create a separate account in this final rule, but we may consider whether there is a basis for such a policy in the future. As noted previously in this final rule, States may choose to eliminate the requirement that burial funds be held in a separate account under section 1902(r)(2) of the Act.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal on burial funds with a modified compliance date of April 1, 2026.

Life Insurance Policies. Section 116 of MIPPA, codified at section 1860D–14(a)(3)(G) of the Act, eliminated the value of life insurance policies as a countable resource for LIS determinations. However, under the SSI resource methodologies described in section 1613(a) of the Act, which applies to MSP-related resource eligibility determinations per section 1905(p)(1)(C) of the Act, the cash surrender value of life insurance with a total face value exceeding \$1,500 is countable.

As discussed in the proposed rule at 87 FR 54768, obtaining documentation of a life insurance policy’s cash surrender value can be highly burdensome for applicants, as the cash surrender value is not knowable from the documents a policyholder is likely to have.

Under proposed § 435.952(e)(4)(i), if an individual attests to having a life insurance policy with a face value below \$1,500, States must accept the attested face value for purposes of making an initial eligibility determination for MSP coverage, unless the State has information that is not reasonably compatible with attested information. If the total face value of all of an individual’s life insurance policies does not exceed \$1,500, the cash surrender value of the individual’s policies is not counted in determining MSP eligibility pursuant to sections 1613(a)(16) and 1905(p)(1)(C) of the Act.

Under proposed § 435.952(e)(4)(i)(A), if an individual attests to having a life insurance policy with a face value in excess of \$1,500, consistent with current regulations at § 435.948, States may accept the attested cash surrender value.

In both cases, if the State has information that is not reasonably compatible with the attested face value or cash surrender value of the policy, we proposed at § 435.952(e)(4)(ii) that the State must seek additional information from the individual in accordance with § 435.952(c)(2). Per current § 435.952(c)(2), the agency may accept a reasonable explanation from the applicant or require documentation.

As with interest and dividend income, per proposed § 435.952(e)(4)(iii), States would have the option to conduct post-enrollment verification for individuals enrolled based on an attested face value. In conducting post-enrollment verification, if a State determines that the face value of the policy exceeds \$1,500, then the State must seek the cash surrender value on behalf of the individual in accordance with proposed § 435.952(e)(4)(iv)(A) and take appropriate action, consistent with regulations relating to changes in circumstances at § 435.916(d) (which we proposed to redesignate and revise at § 435.919 in the proposed rule).

We also proposed at § 435.952(e)(4)(iv)(A) that when documentation of the cash surrender value of a life insurance policy is required, the State must assist the individual with obtaining this information and documentation by requesting that the individual provide the name of the insurance company and policy number and authorize the State

to obtain such documentation on the individual's behalf. The agency may also request, but may not require, additional information from the applicant to assist the agency in obtaining documentation of the cash surrender value, such as the name of an agent. If the individual does not provide basic information about the policy and an authorization, under proposed § 435.952(e)(4)(iv)(B), the State may require that the individual provide documentation of the cash surrender value. Under proposed § 435.952(e)(4)(iv)(C), the State must provide the individual with at least 15 calendar days to provide such documentation if required pursuant to paragraph (e)(4)(i) or (ii) of this section (that is, if documentation of the cash surrender value is needed prior to the agency's making a determination of eligibility) and at least 90 calendar days if required pursuant to paragraph (e)(4)(iii) of this section (that is, post-enrollment). We note that the minimum of 15 calendar days in proposed § 435.952(e)(4)(iv)(C) for applicants to provide documentation of cash surrender value of a life insurance policy is consistent with the minimum 15 calendar days that we propose States must generally provide applicants to provide required documentation under proposed § 435.907(d).

We sought comment on whether 15 calendar days or a longer minimum period, such as 20 calendar days or 30 calendar days, appropriately balances the complexity of determining and obtaining documentation of the cash surrender value with the 45-day limit for States to complete Medicaid eligibility determinations for individuals applying on a basis other than disability status under § 435.912(c)(3).

In the proposed rule (87 FR 54768 through 54769), we acknowledged that our proposal would represent a significant change for a number of States and could present some administrative challenges to implement. However, documenting the cash surrender value of life insurance is a considerable hurdle for many applicants. Because the cash surrender value of most applicants' policies is likely very modest, we noted that the value of any life insurance policy likely would have a minimal impact on their financial eligibility for coverage, whereas obtaining documentation of the cash surrender value may pose a substantial administrative barrier to access. Implementing a process that places fewer burdens on applicants is in the interest of efficient administration of the program, consistent with section

1902(a)(4) of the Act. We also expected that States would be better able to navigate obtaining such documentation when needed.

We received comments on our proposals related to life insurance, and our responses follow.

Comment: Many commenters provided feedback on the proposals to streamline verification processes for life insurance. Some commenters supported the provision, agreeing with CMS that the need to verify the cash value of a life insurance policy is an extremely challenging hurdle for many MSP applicants. One commenter noted that obtaining a letter from the insurer providing cash value can take weeks and often longer and noted that finding the right contact can be challenging because many insurers have closed their businesses or merged or transferred portions of their insurance portfolios to other companies. Several commenters agreed with the proposal to shift the burden to States to verify the cash surrender value, concurring that States were in a better position to gather the information due to the demographics of the applicants and the complexities of tracking down the information. A commenter recommended that to obtain authorization from the applicant to reach out to the insurer, States should inform the individual of the reason for obtaining the information and that they will safeguard the information. A few commenters, while supporting the overall proposal, recommended that CMS extend the deadline for providing documentation to 20 to 30 days for individuals who must produce documentation after refusing to give consent to States to contacting life insurance companies. However, the commenters added that their primary concern is to avoid a requirement that impedes States from meeting the 45-day timeline for making eligibility determinations.

Other commenters opposed our proposal to shift the burden to States to verify the cash surrender value of life insurance, citing concerns that it would increase work for eligibility workers and that insurance companies may refuse to disclose this information to anyone except the life insurance policy holder or their authorized representative. One commenter stated that this burden shifting was unnecessary and their State already provides help with obtaining the cash surrender value to any individual who requests such assistance.

Response: We believe that our proposal appropriately balances the interests of low-income older adults and individuals with disabilities with the

needs and resources of States. At the outset, we note that we anticipate the life insurance provisions will affect only a very small number of people.

Applicants for MSPs tend to be low-income individuals who do not have many assets, especially if they have income low enough to qualify for the MSPs. Additionally, as discussed previously in this final rule, the most popular form of life insurance for lower income individuals, term life insurance, is not impacted by these proposals.

Moreover, as noted previously in this final rule, several States have eliminated the asset test for the MSPs, while others have raised the asset limit to \$10,000 or more for life insurance policies.

In response to concerns about shifting the burden of verifying the cash surrender value of life insurance from individuals to States, we note that States can avoid this burden by simply disregarding life insurance as an asset or increasing the limit using authority under section 1902(r)(2) of the Act. Additionally, this policy is similar to the support that SSA provides. While commenters have stated that they prefer individuals have 30 days to provide life insurance documentation, we are doubtful that States will be able to process MSP applications in 45 days while providing 30 days to produce documents. As such, we believe 15 days strikes the more appropriate balance.

In response to the commenter's suggestion to require States to inform applicants that their personal information will be properly safeguarded when the State requests authorization to contact the applicant's life insurance company, we note that States are required to safeguard information about applicants and beneficiaries obtained or used to verify eligibility in accordance with 42 CFR 431, subpart F. States must publicize their policies governing the confidential nature of information about applicants and beneficiaries, including the legal sanctions imposed for improper disclosure and use, as well as provide copies of these policies to applicants and beneficiaries and to other persons and agencies to whom information is disclosed in accordance with § 431.304. In this context, States would be required to provide a copy of the State's policies related to confidentiality of information to the applicant and to any representative of the applicant's insurance company to whom applicant information may be disclosed during the verification process. We decline to make a new, more specific requirement, because we believe States should have flexibility with regard to how they implement this requirement.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal on life insurance, with a modified compliance date of April 1, 2026.

In-Kind Support and Maintenance. In-kind support and maintenance is assistance an applicant receives that is paid for by someone else, such as groceries or utilities paid for by an adult child. Section 1860D–14(a)(3)(C)(i) of the Act, added by section 116 of MIPPA, excludes in-kind support and maintenance as countable income for LIS determinations. Under SSI methodologies at 20 CFR 416.1131, which apply to MSP determinations, the value of in-kind support and maintenance, if both food and shelter are received by an applicant, is presumed to be one-third of the Federal benefit rate (\$914 per month in 2023 for a single person), unless the applicant provides documentation demonstrating a different amount.

We did not propose any changes to regulations relating to in-kind support and maintenance, but we sought comment on whether obtaining documentation to rebut the one-third presumption poses a barrier to eligibility and whether we should require States to accept self-attestation from individuals who seek to rebut a presumption of the amount of in-kind support and maintenance they receive subject to post-enrollment verification.

We received the following comments on in-kind maintenance and support, and our responses follow.

Comment: A commenter requested that CMS require States to accept self-attestation for individuals seeking to rebut the presumption of the amount of in-kind support and maintenance they receive, while another commenter requested that CMS make this an option for States. However, we did not receive any other specific feedback on this proposal.

Response: As we discussed in the proposed rule (87 FR 54769), States may already exercise the option of accepting self-attestation for individuals seeking to rebut the presumption of the amount of in-kind support and maintenance they receive. Alternatively, States can further streamline the MSP eligibility and enrollment process for individuals with in-kind maintenance and support by disregarding in-kind support and maintenance entirely under section 1902(r)(2) of the Act. While we decline to adopt specific requirements regarding requiring self-attestation for in-kind maintenance and support at this time,

we will consider this input for future rulemaking.

Streamlined Methodologies for Other Non-MAGI and MAGI Groups. Our proposals requiring States to apply enrollment simplifications to income and resources that are counted for MSP determinations but not for LIS only apply to MSPs. However, we sought comment on extending these proposals to all individuals seeking eligibility on a non-MAGI basis. We also sought comment on extending the proposal relating to verification of dividend and interest income to individuals seeking eligibility based on MAGI, as well as whether there are additional income or resource types to which the proposals below could be extended for all individuals.

We received the following comments, and our responses follow.

Comment: Some commenters opposed applying the proposed MSP requirements to all non-MAGI populations. Some others supported this concept, maintaining that applying uniform standards across eligibility groups would help promote clarity for applicants and enhance the utility of leads data for screening other bases of eligibility. A commenter noted that documentation barriers apply equally to these other non-MAGI groups and the need to simplify the processes for these other groups are just as urgent. A few commenters supported applying the income and dividend interest self-attestation requirements to MAGI groups.

A commenter requested clarification on whether extending the exclusion of these income types using flexibility afforded in section 1902(r)(2) of the Act would extend to post-eligibility treatment of income (PETI), which involves how income is counted for beneficiaries in a medically needy eligibility group, or if it would be similar to how Veterans Affairs (VA) Aid and Attendance is treated (excluded for eligibility, included in PETI).

Response: We appreciate the comments and will consider them for future rulemaking. With respect to the commenter's request for clarifications about whether income disregards under section 1902(r)(2) of the Act apply to post-eligibility treatment of income (PETI) calculations, we confirm that any income excluded in an eligibility determination using section 1902(r)(2) of the Act must be counted in the PETI calculation. In the post-eligibility process, income includes all amounts of income available to an individual from all sources that are considered income for purposes of underlying eligibility, even if such income is disregarded at

the eligibility determination phase using section 1902(r)(2) authority. Only income which is expressly exempted from post-eligibility calculations under Federal law would not be included in the post-eligibility process. However, we note that the current proposal does not make any changes to how States may use section 1902(r)(2) authority.

Comment: Several commenters expressed support for the proposed changes to facilitate enrollment through Medicare Part D LIS leads data in §§ 435.4, 435.601, 435.911, and 435.952 but provided feedback on areas that were not addressed in the proposed rule. For example, a commenter requested that the definition of “retirement funds” for the LIS program be aligned with the SSI and Medicaid programs to exclude retirement funds that are in distribution status. Another commenter recommended several ways that CMS could leverage Area Agencies on Aging and SHIPs and other enrollment assistance providers to streamline the MSP application process, such as requiring States to allow such entities to access State eligibility systems and manage and submit data and verifications on behalf of applicants. In addition, a commenter recommended that CMS facilitate access to other public benefits, including by helping to create a combined application for Medicaid coverage and other benefits. A commenter recommended that CMS encourage States to share data with the Indian health care system, specifically Indian Health Services, Tribal, and Urban Indian Organizations. Another commenter urged CMS to improve MSP outreach to eligible individuals, for example, by updating CMS MSP outreach templates to allow States to enter their own income and asset limits and provide the contact information of the SHIP counselor. This commenter further recommended that CMS incentivize States to remove language access barriers for persons with limited English proficiency. A few commenters recommended that CMS consider further linkages between Medicaid applications and other social services. Another commenter sought clarification about whether an individual for whom the State had accepted self-attestation, but was later deemed ineligible would be treated as “enrolled” in Medicaid for purposes of the continuous enrollment condition under the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127, enacted March 18, 2020) or any subsequent continuous enrollment conditions or requirements.

Response: These areas are outside the scope of this rulemaking. With respect

to the question about the continuous eligibility condition under the FFRCA, we note that this provision expired on March 31, 2023.

2. Define “Family of the Size Involved” for the Medicare Savings Program Groups Using the Definition of “Family Size” in the Medicare Part D Low-Income Subsidy Program (§ 435.601)

To further facilitate alignment of methodologies used to determine eligibility for the Medicare Part D LIS and MSP groups and facilitate enrollment in the MSPs based on LIS data, we proposed to amend § 435.601 (“Application of financial eligibility methodologies”) to create a new paragraph (e), in which we proposed to define “family size” for purposes of MSP eligibility.

As discussed in the proposed rule at 87 FR 54770, the Act sets out income limits for MSP enrollment relative to the Federal poverty level (FPL) “applicable to a family of the size involved.” The statute does not define the phrase “family of the size involved” and CMS has historically permitted States to apply their own reasonable definition of this phrase.³⁵

However, in light of the various statutory provisions to facilitate enrollment of LIS recipients into MSPs and vice versa, it is appropriate to establish Federal standards governing the phrase “family of the size involved.”

Specifically, we proposed for purposes of determining eligibility for the MSP groups, consistent with our authority under section 1902(a)(4) of the Act to facilitate methods of administration that promote the proper and efficient administration of the Medicaid program, that “family of the size involved” be defined to include at least the individuals included in the definition of “family size” in the LIS program. Under § 423.772 (“Definitions” relating to the LIS program), “family size” is defined to include the applicant, the applicant’s spouse (if the spouse is living in the same household with the applicant), and all other individuals living in the same household who are related to the applicant and dependent on the applicant or applicant’s spouse for one-half of their financial support.

By proposing that a State’s definition of “family of the size involved” include

“at least” the individuals described in § 423.772 for purposes of the MSP groups, States would retain flexibility to include other individuals who are not described in § 423.772. Additionally, this proposal would not affect the States’ ability to adopt a different reasonable definition of the phrase for purposes of other eligibility groups. We sought comment on this proposal to define “family of the size involved” for purposes of the MSP groups.

We received the following comments on our proposals related to family size, and our responses follow.

Comment: Many commenters supported aligning the definitions of family size for MSP with LIS. A number of these commenters specifically noted that communities of color and marginalized individuals were more likely to be part of multi-generational households. For that reason, they indicated this change would better reflect the household composition of low-income Medicare beneficiaries and promote health equity. MACPAC supported this proposal, noting consistency with its 2020 recommendations to Congress to align the family size definition for the MSPs and LIS.

A few commenters, while supporting the proposed change, requested specific modifications or clarifications. A commenter requested that CMS clarify in the regulation or commentary to the regulation that “relative” includes anyone related by blood, marriage, or adoption based on 2009 CMS LIS guidance to States. The commenter further indicated that a particular State only counts the spouse in the household size if the individual’s income is below the MSP income limit and requested that CMS issue a directive to States to clarify this is not allowed.

Response: We thank the commenters for their support regarding our proposed MSP-related family size definition and agree that these provisions would promote health equity and increase access to the MSPs.

The definition of “family size” in § 423.772 includes the spouse of an applicant who is living in the same household. We therefore confirm that the requirement under the proposed rule that States use the definition of “family size” in § 423.772 to determine MSP eligibility means that States would necessarily include an applicant’s spouse in the applicant’s family, if the spouse is living in the same household. We note, however, that, while being required to include the spouse in the applicant’s household, States could exclude the spouse’s income and/or resources in the applicant’s MSP

eligibility determination. As noted previously in this final rule, States may, under the authority of section 1902(r)(2)(A) of the Act, utilize methodologies less restrictive than the SSI program in determining MSP eligibility, which includes the authority to disregard otherwise-countable income and/or resources, such as the income and/or resources of a spouse.

With regard to what constitutes a relative for purposes of the “family size” definition in § 423.772, as the commenter noted, in 2009 CMS previously confirmed for States that the LIS “family size” definition includes the applicant, the applicant’s spouse (if living with the applicant), and “[a]ny persons who are related by blood, marriage, or adoption, who are living with the applicant and spouse and who are dependent on the applicant or spouse for at least one half of their financial support”³⁶ (emphasis added). Consistent with this guidance, we confirm that to comply with the proposed rule to use the “family size” definition in § 423.772 for MSP eligibility determinations, States would at least need to treat as “related to” the applicant individuals who are related by blood, marriage, or adoption. As noted previously in this final rule, however, States would retain the authority under the proposed rule to include individuals who are not required to be included in the definition of a “family of the size involved” for their MSP-related eligibility determinations. We intend to consider providing future guidance to States to further clarify this requirement.

Comment: Some commenters shared concerns with the proposal to apply the LIS family size definition to the MSPs. For example, some commenters requested more time to complete systems changes and other updates (for example, SPAs) to implement the proposal, and a few commenters opposed the changes as overly burdensome and costly for States because it would require different eligibility and enrollment processes for the MSPs than for other non-MAGI groups. Further, some commenters suggested that extending the LIS family size definition to the MSPs could have an unintentional negative impact on current MSP enrollees if additional income from the relative/dependent is deemed to them, making them no longer eligible for the MSPs. Finally, some

³⁵ Memorandum from Director, Center for Medicaid and State Operations, to Regional Administrator, re: Medicaid Eligibility—Policy Governing Family Size in Determining Eligibility for Qualified Medicaid Beneficiaries and Specified Low-Income Beneficiaries. October 2, 1997. <https://www.medicaid.gov/sites/default/files/2019-12/medicaid-eligibility-memo.pdf>.

³⁶ Centers for Medicare & Medicaid Services, Guidance to States on the Low-Income Subsidy, section 30.6 (Family Size), February 2009. <https://www.cms.gov/Medicare/Eligibility-and-Enrollment/LowIncSubMedicarePresCov/downloads/StateLISGuidance021009.pdf>.

commenters indicated that States may not have information about minor members of household and may find it difficult to verify dependency of non-minor household members. A few commenters questioned whether this information about household members outside of the spousal unit is contained in the LIS leads data transmitted.

Response: We acknowledge that these changes may require many programmatic updates (including SPAs) and systems changes. As such, we are extending through this final rule the timeline for States to comply with this provision.

Regarding the concern about the deeming to MSP applicants or enrollees the income of relatives or dependents, we note that preexisting non-MAGI deeming rules, under section 1902(a)(17)(D) of the Act and § 435.602(a)(2)(i), prohibit States from deeming to an applicant the income or resources of anyone who is not the spouse or parent of that individual. Thus, although the proposal to use the definition of “family size” under § 423.772 to determine MSP-related eligibility may increase the family size of MSP applicants and enrollees, it will not expand the individuals whose income and/or resources may be deemed available to an MSP applicant or enrollee, as the non-MAGI deeming rule described in section 1902(a)(17)(D) of the Act and § 435.602(a)(2)(i) continues to apply.

Finally, we clarify that because the LIS definition of family size includes dependent relatives residing in the same house, SSA collects information to determine the number of relative dependents living in the household, excluding the beneficiary and spouse, and includes it in the LIS leads data sent to States.³⁷ Again, as mentioned throughout, we plan to provide technical assistance and guidance to States to help them understand and use LIS leads data information for MSP eligibility determinations.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal at § 435.601 on family size, with a modified compliance date of April 1, 2026.

3. Automatically Enroll Certain SSI Recipients Into the Qualified Medicare Beneficiaries Group (§ 435.909)

SSI is a Federal cash assistance program that serves low-income individuals who are age 65 or older, or

have blindness or a disability. SSI recipients typically qualify for other Federal and State programs. For example, many SSI recipients are entitled to Medicare under § 406.5(a) and (b). Additionally, in most States, the receipt of SSI is a mandatory basis for Medicaid eligibility pursuant to section 1902(a)(10)(A)(i)(II)(aa) of the Act, implemented at § 435.120 (“Individuals receiving SSI group,” hereafter the “mandatory SSI group”).

Thirty-three States and the District of Columbia (DC) that cover the mandatory SSI group have an agreement with SSA under section 1634(a) of the Act under which SSA completes the determination of eligibility for the mandatory SSI group, and the Medicaid agency automatically enrolls the individual in Medicaid. We commonly refer to these States as “1634 States.” Nine States that cover the mandatory SSI group apply the SSI program’s income and resource methodologies and disability criteria but require individuals to submit a separate application to the State Medicaid agency (“criteria States”).

Eight States do not cover the mandatory SSI group. Instead, these States have elected to exercise authority provided to them under section 1902(f) of the Act to apply financial methodologies and/or disability criteria more restrictive than the SSI program in determining eligibility for individuals 65 years old or older or who have blindness or a disability, subject to certain conditions. These States are referred to as “209(b) States,” after the provision of section 209(b) of the Social Security Act Amendments of 1972 (Pub. L. 92–603), which enacted the State authority codified at section 1902(f) of the Act. The eligibility group authorized by section 1902(f) of the Act is implemented at § 435.121 (“Individuals in States using more restrictive requirements for Medicaid than the SSI requirements,” hereafter “mandatory 209(b) State group”).

As discussed in the proposed rule at 87 FR 54771, because the income and resource standards for the QMB group exceed the income and resource standards for SSI, individuals entitled to Medicare Part A who meet the income and resource requirements for the mandatory SSI group or mandatory 209(b) group will always meet the income and resource requirements for the QMB group and be eligible for the QMB group.

As discussed at 87 FR 54771, most individuals enrolled in Medicare qualify for Part A without paying a premium (premium-free Part A) and are automatically enrolled. According to internal SSA and CMS data, in 2022,

approximately 2.8 million individuals (over 75 percent) of Medicare-eligible SSI recipients were entitled to premium-free Part A.

Under § 406.20, many individuals who are not eligible for premium-free Part A may still enroll in Part A by applying for benefits at SSA and paying a premium (“premium Part A”). Individuals who are not eligible for premium-free Part A are not automatically enrolled in premium Part A and they must enroll in Part B prior to or at the same time as they enroll in Part A. For all Medicare beneficiaries, enrollment in Part B is contingent on a monthly premium, which is subject to an adjustment based on income.

All States currently have entered into a voluntary “buy-in agreement” with the Secretary authorized under section 1843 of the Act which requires them to pay the Part B premiums for certain Medicaid beneficiaries known as “(Part B buy-in)”, including individuals enrolled in the QMB group and those receiving SSI (as described in the Medicare regulations at § 407.42). A buy-in agreement permits States to directly enroll eligible individuals in Medicare Part B at any time of the year (without regard to Medicare enrollment periods or late enrollment penalties if applicable) and to pay the Part B premiums on the individual’s behalf.

In 1634 States, when SSA determines an individual eligible for both the mandatory SSI group and Medicare Part B, CMS automatically initiates Part B buy-in for the individual.³⁸ In SSI criteria and 209(b) States, SSA notifies both the State and CMS that an individual has been determined eligible for SSI and Medicare Part B; however, because such individuals must submit a separate Medicaid application for determinations of eligibility, we do not automatically initiate Part B buy-in. Rather, once the State determines an individual eligible for the mandatory SSI or 209(b) group, the State must initiate Part B buy-in for the individual pursuant to its buy-in agreement.

While individuals enrolled in the mandatory SSI or 209(b) group receive full Medicaid benefits and Part B buy-in, enrollment in the QMB group provides these individuals with additional protection from out-of-pocket health care costs—specifically Medicare

³⁸ States with buy-in agreements must exchange buy-in enrollment data with CMS on a daily basis under § 407.40(c)(4), and CMS also exchanges buy-in data with SSA on a daily basis. CMS collectively refers to these data exchange processes as the “buy-in data exchange.” See Manual for the State Payment of Medicare Premiums, chapter 2, sections 2.0 and 2.1. <https://www.cms.gov/files/document/chapter-2-data-exchange-processes.pdf>.

³⁷ <https://www.ssa.gov/dataexchange/documents/LIS%20record.pdf>.

Part A premiums, if applicable, and Parts A and B cost-sharing charges. Moreover, Federal law prohibits all Medicare providers and suppliers, not just those participating in Medicaid, from charging QMBs for Medicare cost-sharing.

Maximizing the number of Medicaid beneficiaries who are also enrolled in Medicare is advantageous to such individuals, and it can also result in cost savings for States. As a third-party payer, Medicare pays primary to Medicaid for Medicare Part A (inpatient hospital and skilled nursing facility services) and Medicare Part B (outpatient medical care). In addition, Medicaid beneficiaries who are enrolled in both Medicare Parts A and B may join Medicare-Medicaid integrated care plans, which coordinate care across the two payers and may generate savings to the State by helping beneficiaries avoid institutional placement and by providing supplemental benefits, such as dental, transportation, hearing, or other benefits that otherwise would have been covered by Medicaid.

Despite the potential benefits for Medicaid beneficiaries and State agencies, our data from 2022 indicates that over 500,000 or 16 percent of SSI recipients who are eligible to enroll in Medicare are not enrolled in the QMB eligibility group. It is our understanding that a major barrier to QMB enrollment is that many States require SSI recipients to file a separate application with the State Medicaid agency to be evaluated for eligibility for the QMB group, even though they have been determined eligible for the mandatory SSI or 209(b) groups, and all SSI recipients who are entitled or able (with a premium) to enroll in Part A necessarily meet the requirements for QMB eligibility.

We proposed several changes to facilitate the enrollment of SSI recipients into the QMB eligibility group, consistent with our authority in section 1902(a)(4) of the Act to establish standards promoting the proper and efficient administration of the Medicaid program, the requirements in the January 28, 2021 Executive Order on Strengthening Medicaid and the Affordable Care Act, the April 5, 2022 Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage, and the December 13, 2021 Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government. Specifically, we proposed to add a new paragraph (b) at § 435.909 that generally would require States to deem an individual enrolled in the

mandatory SSI or 209(b) group eligible for the QMB group the month the State becomes responsible for paying the individual's Part B premiums under its buy-in agreement pursuant to § 407.47(b). We also proposed technical changes to remove reserved paragraph (a) at § 435.909, redesignate § 435.909 paragraph (b) as (a), and add a new header to new § 435.909(a).

We noted (87 FR 54772) that under section 1902(e)(8) of the Act, QMB eligibility is effective the month following the month in which the determination of eligibility for the QMB group is made. Thus, under our proposal, QMB coverage would start the month following the month the State deems an individual eligible for the QMB group and starts paying the individual's Part B premiums under the buy-in agreement. For example, if an individual is first enrolled in both the mandatory SSI or 209(b) Medicaid group and entitled to Part A in January 2025, the State would start paying the individual's Part B premiums under the buy-in agreement and deem the individual eligible for the QMB group in January 2025. The individual's QMB coverage would start February 1, 2025.

SSI Recipients Who Have Premium-Free Medicare Part A

As noted at 87 FR 54771, SSA automatically enrolls individuals who receive Social Security or railroad retirement benefits or disability benefits for 24 months into premium-free Part A. SSA data for States (including those with a 1634 agreement and those without a 1634 agreement) indicates whether an SSI recipient is entitled to premium-free Part A. As discussed previously in this final rule, because all SSI recipients meet the financial eligibility requirements for the QMB group, proposed § 435.909(b)(1)(i) would require all States to deem SSI recipients who are determined eligible for either the mandatory SSI group at § 435.120 or the mandatory 209(b) group at § 435.121 as eligible for the QMB group if they are entitled to premium-free Medicare Part A. Under the proposed rule, when a 1634 State receives from CMS the Part B buy-in enrollment for an SSI recipient who is entitled to premium-free Medicare Part A, the State would automatically enroll the individual in both the mandatory SSI group and the QMB group; such individuals would not be required to submit a separate application to the Medicaid agency to determine eligibility for the QMB group.

SSI recipients in criteria States and 209(b) States must submit a separate application to the Medicaid agency

which determines eligibility for either the mandatory SSI or the 209(b) group. Thus, under proposed § 435.909(b)(1)(i), once the State has determined an SSI recipient eligible for the mandatory SSI or the 209(b) group, the State also would start paying the Part B premiums for the individual the first month they are entitled to Part A and receiving SSI-based Medicaid and start QMB group coverage the first day of the following month.

In some instances, individuals enrolled in the mandatory SSI or 209(b) group become retroactively entitled to premium-free Medicare Part A based on a retroactive award of Social Security Disability Insurance (SSDI). Under the Medicare regulations at § 407.47(b), States generally become responsible for retroactive Part B premiums for such individuals dating back to the first month they were enrolled in the mandatory SSI or 209(b) group and eligible for Part B.³⁹ In the proposed rule entitled, "Implementing Certain Provisions of the Consolidated Appropriations Act and other Revisions to Medicare Enrollment and Eligibility Rules" (87 FR 25090) (referred to hereafter as the "2022 Medicare eligibility and enrollment proposed rule"), we proposed adding a new paragraph (f) at § 407.47 to limit State liability for retroactive Part B premiums for full-benefit Medicaid beneficiaries, including individuals receiving SSI-based Medicaid, to a period of no greater than 36 months prior to the date of the Medicare enrollment determination.

In the proposed rule, we proposed at § 435.909(b)(3) that retroactive QMB coverage for individuals in the mandatory SSI or 209(b) group be limited to the same period for retroactive Part B premium liability that was set forth in the then-proposed § 407.47(f), which we have now finalized (to take effect starting January 1, 2024) in the 2022 Medicare eligibility and enrollment final rule. For example, if SSA determines an individual enrolled in the mandatory SSI or 209(b) group eligible for premium-free Part A in January 2025 with an effective date back to January 2023, the State would deem the individual eligible for the QMB group retroactive to January 2023. Because coverage under the QMB group begins the month after the month of the eligibility determination, QMB coverage in this example would be effective February 1, 2023. Alternatively, if SSA determines an individual enrolled in the

³⁹ Individuals who are entitled to premium-free Part A are eligible to enroll in Medicare Part B under § 407.10(a)(1).

mandatory SSI or 209(b) group eligible for premium-free Part A in January 2025 with an effective date back to January 2021, the State would deem the individual eligible for the QMB group retroactive to January 2022, with QMB coverage effective February 1, 2022.

Additionally, at 87 FR 54772, we reminded States that individuals deemed eligible for Medicaid are not exempt from regularly-scheduled renewals of Medicaid eligibility in accordance with § 435.916. However, 1634 agreement States do not need to take affirmative steps to renew Medicaid for individuals who continue to receive SSI. Such individuals remain eligible for Medicaid based on their continued receipt of SSI. 1634 States can rely on information electronically transmitted by SSA (for example, the State Data Exchange (“SDX”), State Verification Exchange System (SVES), or State Online Query System (SOLQ)), to renew on an *ex parte* basis, individuals who continue to receive SSI. States may consider SSA’s original notification identifying an SSI recipient as verification that the individual is still receiving SSI and eligible for Medicaid on that basis until the State receives new information from SSA reflecting a change in circumstances. However, for an individual eligible under both the mandatory SSI and QMB groups, the State need only verify that the individual still receives SSI and is entitled to Medicare Part A to renew their eligibility in both groups. When an individual no longer meets the eligibility requirements for the eligibility group under which they have been receiving coverage, the State must determine eligibility on all bases before terminating eligibility.

We received the following comments, and our responses follow.

Comment: Several commenters expressed support for our proposal at § 435.909(b)(1) to require States to automatically enroll most SSI recipients in the QMB group as they are by definition eligible for this coverage. MACPAC stated that the proposal aligns with its goal of improving participation in the MSPs and, from a health equity perspective, could promote access to care for the lowest-income Medicare beneficiaries by improving their access to Medicare cost-sharing assistance. Similarly, some commenters anticipated that our proposal would substantially boost MSP enrollment for SSI recipients because procedural barriers to the MSPs have an outsize impact on this population, who are among those least able to navigate enrollment processes due to multiple social risk factors and physical and mental disabilities.

Finally, a few commenters indicated that this proposal would reduce administrative work for State Medicaid staff and thus benefit States and SSI recipients alike.

Response: We agree that requiring automatic enrollment of certain SSI recipients in QMB is an impactful and efficient step to break down barriers to MSP enrollment and advance health equity for this extremely low-income, high-need population.

Comment: Commenters provided differing perspectives about the time and effort needed for States to comply with this provision. One commenter noted that a certain State already has plans to automate QMB enrollment for SSI recipients in late 2023, while another commenter described another State as equipped to make system updates within 30 days of a final rule’s effective date. In contrast, one commenter contended that the proposal, particularly its creation of a limited retroactive QMB benefit for individuals who become retroactively entitled to premium-free Part A, may require changes in State law, lengthy and complicated systems changes, and employee training.

Response: As noted in section II.A.1. of this final rule, we recognize that effectuating this change may require States to update to their systems and/or State laws, and that unique circumstances may affect the timeline by which States can make these changes. However, relative to other types of eligibility changes (such as implementing provisions leveraging use of LIS leads data discussed in section II.A.1. of this final rule and aligning non-MAGI enrollment and renewal requirements with MAGI requirement discussed in the proposed rule at 87 FR 54780), this proposal is less likely to require complex and lengthy systems updates. Plus, we believe that since all SSI recipients are eligible for the QMB group, it is appropriate to provide access to this vitally important benefit as soon as possible. In addition, under all State buy-in agreements, States must already have mechanisms in place to provide a period of retroactive Part B buy-in for SSI recipients who become retroactively entitled to premium-free Part A based on a retroactive SSDI award under § 407.47(b) and (f). We anticipate that States would build upon these processes to retroactively deem SSI recipients into the QMB group as well. To balance the likelihood of modest systems updates and the benefits of our proposal, we are adopting a modified compliance date of October 1, 2024.

Comment: One commenter agreed the proposal would help beneficiaries and States but requested clarification on whether SSI recipients have the option to decline QMB and, if so, whether declining QMB would affect their overall eligibility for Medicaid.

Response: Under § 435.404, individuals who may be eligible under more than one category may have their Medicaid eligibility determined under the category they select. This means that individuals who may be eligible for QMB and another eligibility group may choose to have eligibility determined only under one category. Therefore, SSI recipients can decline eligibility for QMB coverage without it impacting their eligibility for other Medicaid groups. However, we note that even if SSI recipients eligible for the mandatory SSI or 209(b) group opt out of the QMB group, States would still pay their Part B premiums under their State buy-in agreements because this is a mandatory population for buy-in, and buy-in is involuntary. See §§ 407.40(c)(1) and 407.42(b). Because declining QMB eligibility could expose these very low-income individuals to high Medicare cost-sharing, we would expect very few SSI recipients to opt out of QMB eligibility.

Additionally, while SSI recipients (and other individuals) may decline QMB enrollment without it impacting their Medicaid eligibility for other eligibility groups, they may still be required to apply for Medicare (if they have not already done so) where States have elected under their State plans to require Medicaid applicants and beneficiaries to apply for Medicare as a condition of Medicaid eligibility.

Comment: One commenter noted that CMS did not provide evidence to justify the need for automatic enrollment and requested that CMS withdraw this proposal and instead develop a pilot with States to determine the reasons why eligible individuals do not apply for benefits. The commenter also questioned whether the proposal would inappropriately limit State flexibility to enroll SSI recipients in the medically needy eligibility group.

Response: We decline the recommendation for a pilot project. As explained in the proposed rule (87 FR 54761 through 54762), our engagement with States and other interested parties⁴⁰ as well as numerous other

⁴⁰ See for example, CMS Office of Burden Reduction & Health Informatics, “Navigating the Medicare Savings Program (MSP) Eligibility Experience” April 2022. <https://www.cms.gov/files/document/navigatingmedicare-savings-program-msp-eligibilityexperience-journey-map.pdf>.

studies⁴¹ have demonstrated that burdensome documentation requirements hinder the ability of eligible individuals to enroll in the MSPs and that easing these requirements is key to ensuring individuals can obtain these benefits. Automating QMB enrollment removes the need for this low-income, high-need population to undergo a redundant application process.

Separately, we note that 209(b) States that have elected to extend eligibility to medically needy individuals under § 435.330 (“Medically needy coverage of the aged, blind, and disabled in States using more restrictive eligibility requirements for Medicaid than those used under SSI”) do not have the flexibility to enroll SSI recipients who meet a spenddown in a medically needy group. Under section 1902(f) of the Act and § 435.121(e)(5), SSI recipients (and certain other individuals) who meet a spenddown based on the deduction of incurred medical expenses must be treated as categorically needy.

Comment: Many commenters expressed support for the proposed changes but provided feedback on areas that were not addressed in the proposed rule. For example, many commenters requested that CMS require all States to automatically enroll SSI recipients in Medicaid coverage. One commenter recommended that CMS work with other agencies to streamline processes for enrolling Medicaid beneficiaries in other Federal benefits, when there is data indicating that there is a high likelihood that Medicaid beneficiaries would be eligible for those other Federal benefits.

Response: We thank the commenter for their support of the proposed changes but note that these comments are outside the scope of this rulemaking.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal to require States to deem individuals enrolled in the mandatory SSI or 209(b) group who have premium-

free Medicare Part A as eligible for the QMB group under new § 435.909(b)(1), with a modified compliance date of October 1, 2024 to allow States more time for implementation.

QMB Eligibility for Individuals Eligible for Premium Part A

As we noted previously in this final rule and in the proposed rule (87 FR 54772), individuals age 65 and over who lack the sufficient work history for premium-free Part A may qualify to pay, or have paid on their behalf, a monthly premium to receive Medicare Part A benefits.^{42 43}

All States must pay the Part A premium for individuals who are enrolled in the QMB eligibility group. However, as discussed in the proposed rule at 87 FR 54773, States can choose one of two methods to pay the Part A premium for QMBs.⁴⁴ First, States can expand their buy-in agreement with us under section 1818(g) of the Act to include enrollment and payment of Part A premiums for QMBs who do not have premium-free Part A. Currently, 36 States and the District of Columbia have chosen this option and are called “Part A buy-in States.” In Part A buy-in States, individuals determined eligible for the QMB group can enroll in premium Part A at any time of the year and without regard to late enrollment penalties. Fourteen States do not include Part A in their buy-in agreements and instead pay the Part A premiums for QMBs using a group payer arrangement, which allows certain third parties (for example, States) to pay the Part A premiums for a class of beneficiaries.⁴⁵ States that use a group payer arrangement for QMBs are known as “Part A group payer States.”

As previously noted, to qualify for the QMB eligibility group under section 1905(p)(1) of the Act, an individual must be entitled to hospital insurance benefits under Part A of title XVIII. In general, an individual becomes entitled

to Part A if: (1) they are eligible for premium-free Part A based on payment of a payroll tax; or (2) are eligible to enroll in premium Part A and do enroll (creating a Part A premium obligation).

Further, as noted in the proposed rule at 87 FR 54773, section 1905(a) of the Act specifies that payments of Medicare cost-sharing for QMBs (including Part A premiums) are “medical assistance” for purposes of FFP, if made in the month following the month in which the individual becomes a QMB. Thus, under a literal reading of the words of the statute, a State would not be able to claim or receive FFP under the QMB group for an individual without Premium-free Part A until the month after the month in which the individual is “entitled to Part A,” which would require that a Part A premium be billed to the individual until QMB coverage of the premium would begin. This would create a “catch 22” in which low-income individuals without premium-free Part A could only be eligible for QMB coverage that makes Part A enrollment affordable if they first became personally liable for the high cost of paying the Part A premium to become “entitled” to Part A, and thus eligible for QMB status.

As we explained in the proposed rule at 87 FR 54773, this result would eviscerate the purpose of sections 1843 and 1818(g) of the Act (“buy-in statute”) to avoid undue delays in QMB enrollment. Under a literal reading, States with a Part A buy-in agreement could theoretically use only 100 percent State funds to pay Part A premiums the first month to allow the individual to become entitled to Part A and start QMB coverage the next month. However, in *Harris v. McCrae*, 448 U.S. 297 (1980), the U.S. Supreme Court held that States cannot be required to provide Medicaid using only State funds. Further, while individuals can enroll in Part A at any time of the year without regard for Medicare enrollment periods or applicable late enrollment penalties if the State pays their Part A premium under its buy-in agreement, this is not the case for individuals who are paying the premium themselves. Individuals who must pay the Part A premium themselves must wait until a Medicare enrollment period to enroll in Part A and may be subject to late enrollment penalties. Thus, a literal read of the statute would defeat the purpose of buy-in statute—to avoid delays in QMB enrollment by allowing QMB-eligible individuals who reside in Part A buy-in States to enroll in Part A at any time of the year, without the imposition of Medicare enrollment penalties.

⁴¹ See, for example, MACPAC, “Improving Participation in the Medicare Savings Programs,” Report to Congress, June 2020. <https://www.macpac.gov/publication/chapter-3-improving-participation-in-the-medicare-savings-programs/>; Office of the Assistant Secretary for Planning and Evaluation, *Loss of Medicare-Medicaid Dual Eligible Status: Frequency, Contributing Factors, and Implications*, May 8, 2019. <https://aspe.hhs.gov/basic-report/loss-medicare-medicare-dual-eligible-status-frequency-contributing-factors-and-implications>; and Caswell, Kyle J., and Timothy A. Waidmann, “Medicare Savings Program Enrollees and Eligible Non-Enrollees,” The Urban Institute, June 2017. <https://www.macpac.gov/wp-content/uploads/2017/08/MSP-Enrollees-and-Eligible-Non-Enrollees.pdf>.

⁴² Note that all individuals receiving title II benefits based on disability who have met the 24-month waiting period to enroll in Medicare are entitled to premium-free Part A.

⁴³ To meet the requirements for premium Part A at § 406.20(b), the individual must be: age 65 or older, a U.S. resident, not otherwise entitled to Part A, entitled to Part B or in the process of enrolling in it, and a U.S. citizen or lawful permanent resident who has resided in the U.S. continuously during the 5 years immediately preceding the month they enrolled in Medicare.

⁴⁴ See chapter 1, section 1.7 of the CMS Manual for the State Payment of Medicare Premiums. <https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf>.

⁴⁵ See SSA Program Operations Manual System (POMS) HI 01001.230 Group Collection-General. <http://policynet.ba.ssa.gov/poms.nsf/lx/0601001230>.

Recognizing that a literal read of the statute would produce a result that essentially nullifies the impact of the QMB and buy-in statutory provisions, we instituted a policy over 30 years ago under which States can receive FFP for paying an individual's Part A premium the first month of entitlement, thereby triggering both Part A entitlement and QMB coverage. Under this longstanding policy, Part A buy-in States can determine an individual eligible for QMB status, and thus for their Part A premiums to be paid, if they are enrolled in Part B but not yet entitled to Part A.⁴⁶ Group payer States similarly can approve eligibility for individuals under the QMB eligibility group if SSA has determined them conditionally eligible for premium Part A, through a process known as "conditional enrollment." The conditional enrollment process enables low-income individuals to apply at SSA for premium Part A on the condition that they will only be enrolled in Part A if the State determines they would become eligible for the QMB group upon payment of the Part A premium.⁴⁷

For multiple decades, the conditional enrollment policy has helped hundreds of thousands of individuals, many of whom are poorer and more likely to be non-native English speakers, to obtain essential assistance with Medicare premiums and cost-sharing by allowing States to pay the first month's premium needed to trigger Medicare Part A entitlement (note that they do not actually become "entitled" to Part A until this payment is made). Without this policy, the subsidies available under the QMB group to make Part A affordable would only be available to individuals who somehow found a way to pay the initial Part A premium (including a late enrollment penalty if applicable) themselves.

We proposed to amend the regulations to reflect the foregoing longstanding approach to implementing the statute in a manner that gives full effect to our understanding of the law's

intended policy in this rare instance in which implementing the plain meaning of the words of the statute would produce a result that is at odds with this statutory purpose. As noted in the proposed rule at 87 FR 54774 through 54775, this approach is consistent with *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989) and other court opinions. We noted at 87 FR 54774 through 54775 that there also is CMS precedent for not applying the plain meaning of the words of the statute when it leads to an absurd result contrary to our understanding of the purpose of the statute.

For the reasons set forth previously in this final rule, in this case also, reversing our decades-long method of implementing the statute to instead apply the plain meaning of the words literally would be contrary to the fundamental purpose of the QMB statutory provisions. Therefore, as noted previously in this final rule, we proposed to incorporate in the regulations our longstanding practice of providing FFP for State payments of the first month of an individual's Part A premium for individuals who are eligible for the QMB group based on enrollment in Part B in Part A buy-in States or conditional enrollment in Part A in group payer States. This also would facilitate enrollment into the QMB group for SSI recipients who need to pay a premium to enroll in Part A.

We received comments on our proposed incorporation of this longstanding policy into regulations, and our responses follow.

Comment: Several commenters expressly supported our proposal to codify our decades-old practice of paying Federal matching funds to States that pay the first month's Part A premium for individuals eligible for the QMB group in Part A buy-in and group payer States, while no commenters opposed it. They concurred that a literal read of the relevant statutory provisions would create a "catch-22" in which low-income individuals cannot obtain QMB coverage that makes it affordable to enroll in Medicare until they become liable for the Part A premiums. They indicated that CMS's longstanding method of implementing the statute has helped to prevent a substantial financial barrier that is wholly inconsistent with the purpose of QMB statute. A commenter expressed hope that codifying the longstanding workaround will prompt the few Part A group payer States that have not yet recognized conditional Part A enrollments to now accept them as a valid basis for QMB eligibility.

Response: We thank the commenters for their support of the proposal to codify our longstanding practice to facilitate QMB enrollment for individuals without premium-free Part A. Over 700,000 individuals without premium-free Part A are currently enrolled in the QMB group. As indicated at 87 FR 54760 we estimated that if CMS were to remove this workaround, over 78,000 individuals without premium-free Part A each year would be prevented from enrolling in the QMB group. We anticipate that codification will provide additional clarity to States, beneficiaries, and organizations that assist them.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing without modification our proposal to codify our existing practice allowing States to receive Federal matching funds for the payment of Part A premiums the first month an individual is entitled to premium Part A.

SSI Recipients Eligible for Premium Part A

Based on the longstanding policy described previously in this final rule, in Part A buy-in States, when an SSI recipient who lacks sufficient work history for premium-free Part A has been determined eligible for the mandatory SSI or 209(b) group and is enrolled in Part B, the State can determine the individual eligible for the QMB eligibility group and enroll the individual in Part A buy-in.

To streamline QMB enrollment for SSI recipients who must pay a premium to enroll in Part A, we proposed at § 435.909(b)(1)(ii) to require Part A buy-in States to deem those individuals who are determined eligible for the mandatory SSI or 209(b) groups as eligible for the QMB group and initiate their enrollment into Medicare Part A the month they are enrolled in Part B buy-in.

In Part A buy-in States with a 1634 agreement, once the State receives the automated Part B buy-in enrollment from CMS for an SSI recipient who lacks a sufficient work history for premium-free Part A, under proposed § 435.909(b)(1)(ii) the State would enroll the individual in the mandatory SSI group, deem the individual eligible for the QMB group, and effectuate enrollment in Medicare Part A through the buy-in agreement.

In a Part A buy-in State without a 1634 agreement (that is, a criteria or 209(b) State), once the individual applies to the Medicaid agency, some States currently only determine

⁴⁶ Chapter 1, section 1.10 of the CMS Manual for the State Payment of Medicare Premiums, <https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf>, and SSA POMS HI 00801.140.C Premium Part A Enrollments for Qualified Medicare Beneficiaries (QMBs)—Part A Buy-In States and Group Payer States. <http://policy.net.ba.ssa.gov/poms.nsf/lx/0600801140>.

⁴⁷ The conditional enrollment process is described in chapter 1, section 1.11 of the CMS Manual for the State Payment of Medicare Premiums, <https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf>, and in SSA POMS HI 00801.140 Premium Part A Enrollments for Qualified Medicare Beneficiaries (QMBs)—Part A Buy-In States and Group Payer States. <http://policy.net.ba.ssa.gov/poms.nsf/lx/0600801140>.

eligibility for the mandatory SSI or 209(b) group, as applicable, and initiate Part B enrollment per their buy-in agreement. Under proposed § 435.909(b)(1)(ii), these Part A buy-in States also would be required to deem any individuals determined by the State to be eligible for the mandatory SSI or 209(b) groups as eligible for the QMB group and initiate enrollment in both Medicare Part A and Part B buy-in.

In the 14 group payer States, it is more challenging for SSI recipients to enroll in Medicare Part A and the QMB eligibility group. Unlike in Part A buy-in States, individuals determined eligible for the mandatory SSI or 209(b) group in group payer States who are enrolled in Part B pursuant to the State's buy-in agreement will not necessarily satisfy the eligibility requirement for the QMB group that the individual be entitled to Part A. Even though the State will initiate enrollment of the individual in Part B, pursuant to its buy-in agreement, it will not cover the individual's Part A premium or initiate Part A enrollment under the buy-in agreement. Instead, the individual must separately apply for premium Part A at SSA using the conditional enrollment process, which is administratively burdensome for both individuals and the State, and the vast majority of individuals fail to complete the process unless an eligibility worker or other application assistor provides hands-on assistance throughout.⁴⁸

Two other challenges currently make QMB enrollment harder for SSI recipients without premium-free Part A in group payer States. First, group payer States can only enroll individuals in premium Part A during the general Medicare enrollment period that runs from January through March each year. Second, group payer States are required to pay late enrollment penalties, if applicable, for those Medicaid beneficiaries who did not enroll in Medicare Part A timely when they first became eligible to do so.

To streamline QMB enrollment for SSI recipients without premium-free Part A in group payer States, we proposed to add a State option for deeming individuals eligible for the QMB group. Specifically, proposed § 435.909(b)(2) would allow, but not require, group payer States to directly initiate Medicare Part A enrollment for individuals who are not entitled to premium-free Part A without first

sending them to SSA to apply for conditional Part A enrollment. Under this proposed State option, once the State has determined the individual eligible for the mandatory SSI or 209(b) group and become liable for paying their Part B premiums under the buy-in agreement pursuant to § 407.42, the State would also be able to deem them eligible for the QMB group.

We received the following comments, and our responses follow.

Comment: Several commenters supported our proposal to require Part A buy-in States to deem as eligible for the QMB group certain SSI recipients who must pay a premium to enroll in Part A because it would meaningfully improve the ability of this low-income, at-risk population to access the benefits for which they qualify and that they distinctly need.

Response: We thank commenters for their support. We anticipate it will measurably increase the number of SSI recipients without premium-free Part A who participate in the QMB group.

Comment: Some commenters sought clarifications about our proposals to require QMB deeming in Part A buy-in States and allow it in group payer States. A few commenters questioned whether our proposal would require States to deem SSI recipients without premium-free Part A into the QMB eligibility group retroactively. One commenter inquired whether Federal statute permits retroactive coverage of Medicare Part A premiums or allows States to provide retroactive Part A buy-in coverage to SSI recipients, but not other QMB-eligible individuals. Another commenter inquired whether the proposal would require States to modify their systems to enroll SSI recipients in Part A buy-in. The commenter went on to question whether Part A buy-in States would need to align the QMB start date with the individual's Part A enrollment during the GEP and whether individuals who lose Part A buy-in may be required to pay late enrollment penalties. The commenter also noted that streamlining QMB enrollment processes for non-SSI recipients who qualify for premium Part A, including non-citizens, is equally important and suggested that CMS consider facilitating QMB enrollment for this population. The commenter indicated that LIS leads data would not include records for such individuals.

Response: At the outset, we clarify that our proposal would not permit States to retroactively enroll SSI recipients in Part A buy-in since, under section 1902(e)(8) of the Act, QMB coverage is effective the month following "the month in which the [QMB] determination first occurs" (that

is, the month the State deems the SSI recipient eligible for the QMB group). For individuals who lack premium-free Part A, deeming would occur the month they are enrolled in the mandatory SSI or 209(b) group and Part A buy-in, and QMB coverage would start the month following the deeming month. For example, if an individual were enrolled in the mandatory SSI or 209(b) group and Part B buy-in in April 2025, the State would deem the individual eligible for QMB in April 2025, with Part A buy-in and QMB coverage effective May 1, 2025. As explained at 87 FR 54772 and in our comment response in this final rule, States would only deem individuals eligible for QMB coverage during a past period if they are eligible for the mandatory SSI or 209(b) group and are retroactively determined eligible for premium-free Part A due to a delayed SSDI award.

In addition, we anticipate that States may need to modify their processes and systems to enroll SSI recipients in Part A buy-in the month after they are deemed eligible for QMB and expect that the nature and design of operations and system changes will vary by State. We are available to provide technical assistance to States as they make operational and systems changes to implement this proposal.

We clarify that Part A buy-in States would deem SSI recipients in QMB and enroll them in Part A buy-in throughout the year, not just during the GEP, since individuals covered under State buy-in agreements are not subject to Medicare enrollment periods. Further, we clarify that while residents of group payer States who lose eligibility for Part A buy-in may be subject to a late enrollment penalty, residents of Part A buy-in States who lose Part A buy-in are not liable for a late enrollment penalty even if they had been paying one prior to enrollment in Part A buy-in.⁴⁹

Finally, we agree with the importance of simplifying QMB enrollment for individuals who are not entitled to SSI and lack premium-free Part A, many of whom are otherwise ineligible for Medicaid coverage and would solely rely on Medicare for health insurance. As such, we may consider whether a basis exists to streamline QMB enrollment for non-SSI recipients who lack premium-free Part A in future rulemaking. We are also available to explore with States options to streamline their current QMB eligibility and enrollment processes for this

⁴⁸ Medicare Rights Center, "Streamlining Medicare and QMB Enrollment for New Yorkers: Medicare Part A Buy-In Analysis and Policy Recommendations," February 2011. <https://www.medicarerights.org/pdf/Part-A-Buy-In-Analysis.pdf>.

⁴⁹ CMS Manual for the State Payment of Medicare Premiums, chapter 1, section 1.15. <https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf>.

population. We also clarify that LIS leads data may include records for non-SSI recipients who lack premium-free Part A, do not already have Medicaid, and have applied for LIS.

Comment: Many commenters supported our proposal to permit group payer States to deem SSI recipients without Part A eligible for QMB by employing processes used by Part A buy-in States to directly initiate Part A entitlement for individuals enrolled in Part B (avoiding the need to first send them to SSA to enroll in conditional Part A). They agreed that it would significantly simplify QMB enrollment for beneficiaries and promote administrative efficiencies for States. A few commenters supported keeping this an option rather than a requirement because increasing QMB enrollment through streamlined processes could increase States costs and require systems updates.

Other commenters urged CMS to require group payer States to bypass the conditional enrollment process, citing numerous challenges arising from this process. These commenters indicated that the complexity of the conditional enrollment process presents an almost insurmountable obstacle for SSI recipients, who are among those least able to navigate complex application processes. They contended that requiring the lowest income, high needs older adults to first apply for conditional Part A at a separate agency is unrealistic and unfair and that getting lost in the process is the rule rather than the exception for those who lack assistance from an advocate, particularly for individuals with limited English proficiency and low literacy skills. They explained that having to wait until the GEP to file a conditional enrollment further complicates and delays the process. Some commenters noted that SSI recipients in States with group payer and 209(b) status face the steepest obstacles to obtain the benefits to which they are entitled because they must file an application for the 209(b) eligibility group with their State before completing the two-step application process to enroll in QMB. Some commenters stated that, despite the release of clearer program instructions to SSA field offices, government offices commonly provide incorrect information about the process or fail to properly enroll individuals in benefits. One commenter suggested that CMS has legal authority to mandate that group payer States deem SSI recipients without premium-free Part A eligible for QMB because doing so would still leave the administrative Part A group payment option intact. Finally, another

commenter requested that CMS require the remaining group payer States to convert to Part A buy-in status since a particular group payer State has not voluntarily taken that step despite requests from interested parties.

Response: We appreciate the commenters' support for allowing group payer States to bypass the conditional enrollment process for SSI recipients and deem them eligible for the QMB group. As we explained previously in this final rule and as noted by the commenters, although the conditional enrollment process provides a way for individuals to enroll in the QMB without paying the Part A premiums upfront, it is still extremely difficult for this very low-income, high-need population to traverse. We encourage group payer States to adopt the more streamlined processes used in Part A buy-in States. However, we recognize that the 14 group payer States may face unique challenges, with differing needs and opportunities. Therefore, we decline to adopt the commenters' recommendations to require group payer States to deem SSI recipients without Part A in QMB, or to convert to Part A buy-in status in this final rule, but we may consider whether there is a basis for such requirements in future rulemaking.

Comment: Several commenters recommended that CMS take steps to persuade group payer States to become Part A buy-in States in the event we permit—but do not require—group payer States to deem SSI recipients eligible for the QMB group. For example, some commenters suggested that CMS provide direct outreach to group payer States to explain how they would achieve savings by enrolling more Medicaid beneficiaries in Part A, which pays primary to Medicaid for Part A-covered services like inpatient hospital and skilled nursing facility care. Another commenter requested that CMS consider levers to incentivize group payer States to convert to Part A buy-in status, for example, charging group payer States for the additional administrative costs SSA incurs for processing conditional Part A applications for their residents. A commenter suggested that CMS require group payer States that decline to deem SSI recipients eligible for the QMB group to actively assist individuals in completing the conditional enrollment process at SSA rather than requiring individuals to navigate the process themselves.

Response: We agree with the importance of working with group payer States to assess the impact of entering into a Part A buy-in agreement. Part A

buy-in agreements are beneficial to individuals and may also reduce administrative burden and costs for providers and States. To that end, we commissioned a decision support tool and offered technical assistance to group payer States to help them analyze the fiscal impact of newly executing a Part A buy-in agreement with us.⁵⁰ We will continue such education and outreach to group payer States. We decline to adopt the commenter's suggestion to charge group payer States for costs associated with conditional enrollments at SSA, but we may consider other steps to promote QMB enrollment group payer States in the future. We also highly encourage States to help individuals in completing the conditional enrollment process at SSA, but we decline to make such assistance a requirement at this time.

After considering the comments received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal to require Part A buy-in States to deem individuals enrolled in the mandatory SSI or 209(b) group eligible for the QMB group and to permit group payer States to adopt the same streamlined procedures used in Part A buy-in States under new §§ 435.909(b)(1) and 435.909(b)(1) with a modified compliance date to allow States more time for implementation. This modification extends the compliance date for this provision to October 1, 2024.

4. Clarifying the Qualified Medicare Beneficiary Effective Date for Certain Individuals (§ 406.21)

We proposed to clarify the effective date of coverage under the QMB group for individuals who must pay a premium to enroll in Part A and reside in a group payer State to provide individuals with protection from Medicare premiums and cost-sharing costs on the earliest possible date.

As discussed in the proposed rule at 87 FR 54775, eligible individuals who do not enroll in premium Part A during their initial enrollment period (IEP), the 7-month period that starts the third month before the individual qualifies for Medicare, or who disenroll from premium Part A and wish to re-enroll, must generally do so during the general

⁵⁰ See Dujack, Andrew et al., "Assessing the Fiscal Viability of a Medicare Part A Buy-in Agreement in Group Payer States," *The Integrated Care Resource Center*, December 2021. <https://www.integratedcareresourcecenter.com/sites/default/files/Assessing%20the%20Fiscal%20Viability%20of%20a%20Medicare%20Part%20A%20Buy-in%20Agreement%20in%20Group%20Payer%20States.pdf>.

enrollment period (GEP). The GEP, established under section 1837(e) of the Act, is the period beginning on January 1 and ending on March 31 of each year. Section 120 of the Consolidated Appropriations Act, 2021 (CAA, 2021, Pub. L. 116–260) revised the Part A entitlement effective date for individuals who enroll during the GEP beginning on or after January 1, 2023 from the first of July following their enrollment to the first day of the month following the month in which they enroll. In the November 3, 2022 regulation entitled “Medicare Program; Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules” (87 FR 66454), we revised § 406.21(c) to implement the GEP effective dates outlined in section 120 of the CAA.

To align with that change, we proposed at 87 FR 54775 to clarify the applicable effective date of QMB coverage for an individual who resides in a group payer State and enrolls in conditional Part A during the GEP. As discussed previously in this final rule, in the proposed rule (87 FR 54773 & 54774), in a Part A buy-in State, we consider enrollment in Part B sufficient to meet the requirement that an individual be entitled to Part A for the purposes of the QMB eligibility determination. However, in a group payer State, enrollment in QMB for individuals who need to pay a premium to enroll in Part A is always a two-step process. The State cannot determine individuals eligible for QMB and enroll them in Part A buy-in until SSA establishes actual or conditional Part A enrollment. With respect to QMB enrollment under a buy-in agreement under § 406.26, Medicare Part A coverage begins the first month an individual is entitled to Part A under § 406.20(b) and has QMB status. We consider a conditional Part A filing to be sufficient to fulfill the requirement for entitlement to Part A as applicable for QMB coverage.⁵¹

Specifically, we proposed in new § 406.21(c)(5) to codify existing policy that individuals who reside in group payer States and enroll in actual or conditional Part A during the GEP can obtain QMB as early as the month Part A entitlement begins. Beginning on or after January 1, 2023, for individuals who enroll in Medicare during the GEP, QMB coverage starts the month premium Part A entitlement begins (if

the State determines the individual has met the eligibility requirements for QMB coverage in the same month that Part A enrollment occurs), or a month later than the month of Part A entitlement (if the individual is determined eligible for QMB the month Part A entitlement begins or later).

We received the following comments on our proposed codification of the effective date in § 406.21(c)(5), and our responses follow.

Comment: Multiple commenters expressed thanks for our proposal to codify our existing policy regarding the applicable effective date of QMB coverage for an individual who resides in a group payer State and enrolls in conditional Part A during the GEP. According to the commenters, codifying the policy would aid beneficiaries and promote clarity and accountability for States as they adjust their processes to align with changes to the effective date of Part A entitlement for enrollments made during the IEP and GEP and the creation of new SEPs under the CAA, 2021. A commenter supported the policy but noted that it would take 18–24 months for a specific State to implement this change.

Response: We thank the commenters for their support for incorporating into our regulations our existing policy regarding the QMB start date in group payer States. To provide States more time to implement this proposal, we plan to modify the compliance date to April 1, 2026.

Comment: A few commenters encouraged CMS to provide technical assistance and information to States and education to SHIPs, advocates, and counselors to help ensure individuals in group payer States receive benefits at the earliest possible date. For example, a commenter suggested that CMS produce FAQs explaining how the conditional enrollment process generally works and how the change in the effective date of GEP enrollments under the CAA, 2021 (that is, the month following the month of enrollment) means that individuals will lose valuable months of benefits if they do not apply for QMB the same month they conditionally enroll in Part A. The commenter also requested that CMS clarify that individuals who enroll in conditional Part A would not become liable for Part A premiums if they are not approved for the QMB group and address uncommon occurrences, such as if an individual wants to change their conditional Part A enrollment to actual Part A enrollment if they experience a medical emergency and need Part A coverage before QMB benefits can start. The commenter further recommended

that, as group payer States update their processes, CMS act quickly to help correct any QMB enrollment delays and ensure that individuals receive refunds for any Medicare cost-sharing amounts they incur before such corrections are made. Another commenter requested clarification on whether a group payer State must provide Part A buy-in and QMB benefits to individuals who enroll in premium Part A during an SEP, such as the new SEP for formerly incarcerated individuals.

Response: We agree with the importance of providing education and assistance to promote the earliest access to QMB benefits. We will consider these issues and others as we update our existing materials to inform States, beneficiaries, SHIPs, advocates, and other interested parties about these policies. In response to the question about Part A enrollments in group payer States during an SEP, we clarify that individuals can use the new SEPs to enroll in premium Part A under existing SSA processes for the purposes of enrolling in the QMB eligibility group. As such, a group payer State must determine eligible individuals who enroll in premium Part A during an SEP eligible for Part A buy-in and QMB coverage. Further, if a group payer State recognizes conditional enrollments filed during a GEP as meeting the requirement for entitlement to Part A for the purposes of QMB eligibility, it would be required to treat conditional enrollments made during an SEP as a basis for QMB eligibility.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal to codify existing policy that individuals who reside in group payer States and enroll in actual or conditional Part A during the GEP can obtain QMB as early as the month Part A entitlement begins under § 406.21(c)(5), with a modified compliance date to allow States more time to implement this provision. This modification extends the compliance deadline to April 1, 2026.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a “collection of information” requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purposes of the PRA and this section of the preamble, collection of information

⁵¹ See CMS Manual for the State Payment of Medicare Premiums, chapter 1, section 1.11. <https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf>.

is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In our September 7, 2022 (87 FR 54760) proposed rule, we solicited public comment on each of the required issues under section 3506(c)(2)(A) of the PRA for the following collection of information requirements. We did not receive comments related to any of the proposed collection of information requirements or associated burden estimates.

We have made changes from the proposed rule to this final rule to the

wages identified immediately below, the associated cost estimates, the number of States impacted by our change to the definition of family size, associated cost estimates (see discussion in section IV.C.1. of this final rule) and cost estimates impacted by changes related to the modification of our proposal to screen LIS applicants for full Medicaid (see discussion in section IV.C.1. of this final rule). At this time, we are not making changes to other proposed collection of information requirements and time estimates in this rule. As described later in this section, we are reorganizing (relative to the proposed rule) the Collection of Information and Regulatory Impact Analysis sections of this final rule. However, we discuss wage, FMAP, and other related info here in this section to match its placement in the proposed rule.

A. Wage Estimates

Wage Changes. In this final rule, we are adjusting the wage for individuals from \$28.01/hr to \$21.98/hr. The adjustment from the proposed rule is based on internal review as we changed the source of the wage figure from U.S.

Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates at \$28.01/hr (see 87 FR 54817) to HHS guidance at \$21.98/hr (see Wages for Individuals, below). This change affects the cost estimates in sections IV.C.1. and 2. of this final rule.

We are also adjusting the wages for State government respondents. At the time of publication of the proposed rule the most recent BLS wage figures were from May 2021 (see 87 FR 54817). At the time of publication of this final rule the most recent BLS wage figures are from May 2022. This change affects the cost estimates in sections IV.C.1., 2. and 5. of this final rule.

Wages for State Governments. To derive average State-specific costs, we used data from the BLS May 2022 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, Table 2 presents the BLS' mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

TABLE 2—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage (\$/hr)	Fringe benefits and other indirect costs (\$/hr)	Adjusted hourly wage (\$/hr)
Business Operations Specialist	13–1000	40.04	40.04	80.08
Computer Programmer	15–1251	49.42	49.42	98.84
Database and Network Administrator and Architect	15–1240	53.08	53.08	106.16
Eligibility Interviewers, Government Programs	43–4061	24.05	24.05	48.10
General and Operations Mgr	11–1021	59.07	59.07	118.14

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Cost to State Governments. To estimate State costs, it was important to take into account the Federal Government's contribution to the cost of administering the Medicaid program. The Federal Government provides funding based on a Federal Medical Assistance Percentage (FMAP) that is established for each State, based on the per capita income in the State as compared to the national average. FMAPs range from a minimum of 50

percent in States with higher per capita incomes to a maximum of 76.25 percent in States with lower per capita incomes. For Medicaid, all States receive a 50 percent FMAP for administration. As noted previously, States also receive higher Federal matching rates for certain services and for systems improvements or redesign, so the level of Federal funding provided to a State can be significantly higher. As such, in taking into account the Federal contribution to the costs of administering the Medicaid program for purposes of estimating State burden with respect to the collection of information requirements, we elected to use the higher-end estimate that the States would contribute 50 percent of the costs, even though the burden will likely be much smaller.

Wages for Individuals. We believe that the cost for beneficiaries undertaking administrative and other tasks on their

own time is a post-tax wage of \$21.98/hr.

The Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices⁵² identifies the approach for valuing time when individuals undertake activities on their own time. To derive the costs for beneficiaries, we used a measurement of the usual weekly earnings of wage and salary workers of \$1,059⁵³ for 2022 and then divided by 40 hours to calculate an hourly pre-tax wage rate of \$26.48/hr. This rate is adjusted downwards by an estimate of the effective tax rate for median income households of about 17 percent or \$4.50/hr (\$26.48/hr × 0.17), resulting in the post-tax hourly wage rate of \$21.98/hr.

⁵² https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/176806/VOT.pdf.
⁵³ <https://fred.stlouisfed.org/series/LEU0252881500A>.

hr (\$26.48/hr – \$4.50/hr). Unlike our State wage adjustments, we are not adjusting beneficiary wages for fringe benefits and other indirect costs since the individuals' activities, if any, would occur outside the scope of their employment.

B. Information Collection Requirements (ICRs)

In the proposed rule, we projected both new burdens and savings based on how our proposed rule would change burdens relative to the status quo. Because the Medicaid program predates the enactment of PRA and we viewed many longstanding basic Medicaid requirements as customary business practices for State Medicaid agencies,⁵⁴ we did not have specific PRA packages outlining these burdens inherent to the Medicaid program, including application⁵⁵ (burden on State in processing the application and burden on individual in filling out application); requests for additional information (burden on State in assessing application and burden on individual in responding to State); making eligibility determinations and providing appeal rights (burden on State in making determinations and burden on individual if filing appeal); verifying information in the application (burden on State in conducting verifications and burden on individual in supplying supporting documentation); and renewal process (burden on State in conducting renewals and burden on individual in responding to State). However, we now recognize that creating PRA packages for the longstanding Medicaid functions, plus the changes from this final rule, would improve transparency for the public. In

the proposed rule, we incorrectly referenced PRA packages that did not contain these longstanding provisions. As such, after publication of this final rule, we plan to develop and publish new PRA packages that consist of both the longstanding MSP application and enrollment provisions and the changes made by this final rule. In the meantime, we are moving our estimates for burden and savings to the Regulatory Impact Analysis (RIA) section.

IV. Regulatory Impact Analysis

A. Statement of Need

We have learned through our experiences in working with States and other interested parties that certain policies result in unnecessary burdens and create barriers to enrollment and retention of coverage. As a result, many older adults and people with disabilities experience administrative confusion, economic hardships, and challenges accessing health care services. In response to multiple Executive Orders, as cited in section I. of this final rule, we reviewed existing regulations for areas where access could be improved.

In this rulemaking, we finalize policies to streamline processes to enroll in (and maintain enrollment in) Medicaid through the MSPs. Together, the changes in this final rule would reduce administrative burden on States and enrollees, expand coverage of eligible applicants, increase retention of eligible enrollees, and improve health equity.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled “Modernizing Regulatory Review” (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Executive Order 14094

entitled “Modernizing Regulatory Review” (hereinafter, the Modernizing E.O.) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$200 million or more in any 1 year (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or 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, territorial, or Tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action(s) or with significant effects (\$200 million or more in any 1 year). Based on our estimates, OMB's OIRA has determined this rulemaking is significant per section 3(f)(1) as measured by the \$200 million threshold. Accordingly, we have prepared an RIA that to the best of our ability presents the costs and benefits of the rulemaking.

The aggregate economic impact of this final rule is estimated to be \$26.16 billion (in real FY 2025 dollars) over 5 years. This represents additional health care spending made by Medicaid on behalf of beneficiaries, with \$10.67 billion paid by the Federal Government and \$7.89 billion paid by the States, and an additional \$7.60 billion in Medicare spending.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$8.0 million to \$41.5 million in any one year. Individuals and States are not included in the definition of a small entity. Since this final rule

⁵⁴ See final rule titled “Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP” published in the November 30, 2016 **Federal Register** (81 FR 86382, 86438). <https://www.federalregister.gov/documents/2016/11/30/2016-27844/medicaid-and-childrens-health-insurance-programs-eligibility-notices-fair-hearing-and-appeal>; final rule titled “Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment” published in the July 15, 2013 **Federal Register** (78 FR 42159, 42288). <https://www.federalregister.gov/documents/2013/07/15/2013-16271/medicaid-and-childrens-health-insurance-programs-essential-health-benefits-in-alternative-benefit>; and final rule titled “Eligibility Changes Under the Affordable Care Act of 2010” published in the March 23, 2012 **Federal Register** (77 FR 17143, 17197). <https://www.federalregister.gov/documents/2012/03/23/2012-6560/medicaid-program-eligibility-changes-under-the-affordable-care-act-of-2010>.

⁵⁵ There is a current package for burdens related to Medicaid application (0938–1191 (CMS–10440)), but it focuses on MAGI eligibility groups, not non-MAGI eligibility groups.

would only impact States and individuals, we do not believe that this final rule will have a significant economic impact on a substantial number of small businesses.

In addition, section 1102(b) of the Act requires CMS to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds. This final rule applies to State Medicaid agencies and would not add requirements to rural hospitals or other small providers. Therefore, we are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the UMR also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2023, that is approximately \$177 million. We believe that this final rule would have such an effect on spending by State, local, or Tribal governments but not by private sector entities.

Overall Assumptions

In developing these estimates, we have relied on several global assumptions. All estimates are based on the projections from the President's FY 2024 Budget. We have assumed that new enrollees would have the same average costs as current enrollees by eligibility group, unless specified in the description of the estimates (for example, some enrollees only would receive Medicare premium assistance). We have also updated the implementation dates of the provisions, with provisions to require States to automatically enroll SSI recipients as QMBs starting in October 2024 and all other provisions requiring compliance by April 2026. We have also relied on the data sources and assumptions described in the next section to develop estimates for specific provisions of this final rule.

C. Anticipated Effects

1. Facilitate Enrollment Through Medicare Part D LIS Leads Data

As described in section II.A.1. of this final rule, we are finalizing the addition of § 435.911(e), which focuses on using

the SSA data from processing LIS applications "LIS leads data" to streamline MSP eligibility determinations. Relative to our proposal, the finalized paragraph (e) has three main differences. First, we are modifying the proposed requirement at paragraphs (e)(6)(i) and (ii) for States to collect additional information to screen individuals for full Medicaid eligibility to require that distinct from the MSP enrollment process unless otherwise approved by CMS, States separately provide the individual the opportunity to authorize the Medicaid agency to determine full Medicaid eligibility and furnish any additional needed information. We decided to modify this proposal based on comments received to avoid delays in MSP enrollment and disadvantages associated with modifying the LIS application, while also ensuring that we facilitate individuals' access to full-scope Medicaid coverage. We are also moving this requirement from paragraphs (e)(6)(i) and (ii) to paragraph (e)(9). Second, we are applying a compliance date of April 1, 2026 for States to come into full compliance with all the provisions in new § 435.911(e). Third, we revised some wording and reordered the other paragraphs in § 435.911(e) for clarity and flow as noted below:

- *Paragraph (e)(1):* We are retaining the requirement to accept LIS leads data in paragraph (e)(1), but are removing the term "Low Income Subsidy application data" and using an acronym in place of "Social Security Administration" since "LIS leads data" and "SSA" are now established in paragraph (e).

- *Paragraph (e)(2):* We are keeping the requirement to treat LIS leads data as application for the MSPs without requiring submission of another application in finalized paragraph (e)(2), but are moving the requirement regarding timely application processing to finalized paragraph (e)(7).

- *Paragraph (e)(3):* We are moving the requirement to accept any information provided by SSA, which we are now specifying as LIS leads data for greater consistency in terminology throughout the regulation, without further verification, from proposed paragraph (e)(5) to finalized paragraph (e)(3) and adding that this provision applies unless the State agency has information that is not reasonably compatible with the LIS leads data or the LIS leads data would not support a determination of MSP eligibility.

- *Paragraph (e)(4):* We are retaining the requirement to not collect information or documentation from the individual in finalized paragraph (e)(4) and are adding that this is unless the

State agency has information that is not reasonably compatible with the LIS leads data.

- *Paragraph (e)(5):* We are moving the requirement to seek additional information from proposed paragraph (e)(3) to finalized paragraph (e)(5) and defining additional information needed for the MSP determination as information that is not in the leads data.

- *Paragraph (e)(6):* We are moving the requirement to verify an individual's citizenship and immigration status from proposed paragraph (e)(6)(iii) to finalized paragraph (e)(6), adding a citation to § 435.406, and streamlining the regulation text.

- *Paragraph (e)(7):* We are moving the requirement regarding timely application processing from proposed paragraph (e)(2) to finalized paragraph (e)(7).

- *Paragraph (e)(8):* We are moving additional requirements if the LIS leads data does not support a determination of MSP eligibility from proposed paragraph (e)(7) to finalized paragraph (e)(8).

- *Paragraph (e)(9):* We are moving and modifying the proposal related to screening for full Medicaid from proposed paragraphs (e)(6)(i) and (ii) to finalized paragraphs (e)(9)(i) and (ii) to require States to provide individuals with—in addition to and separate from any requests for additional information necessary for a determination of Medicare Savings Program eligibility, unless CMS approves otherwise—information about the availability of additional Medicaid benefits on other bases and responsibilities of the individual applying for such benefits, and an opportunity to furnish such additional information as may be needed to determine whether the individual is eligible for such additional Medicaid benefits.

The clarifications in paragraph (e)(9) requiring screening of LIS applicants for full Medicaid to be separate from a request for additional information necessary for a determination of MSPs does not represent a major change to the proposal. However, we neglected to make an initial burden estimate for the proposed requirement to screen LIS applicants for full Medicaid. As such, we now make an estimate for the new requirement in paragraph (e)(9) that would require States to collect new information, provide beneficiaries with an opportunity to authorize this new information collection, and make a determination for full Medicaid based on the information collection. We are permitting significant flexibility to States for how they implement the requirement at paragraph (e)(9), and we

expect States will make varying use of automation and different forms of communication to applicants. For efficiency reasons, we believe that a State would send the required disclosures/consent for the agency to make a full Medicaid eligibility determination as well as the request for additional information needed to make a full Medicaid determination in one correspondence. Moreover, instead of asking many questions in order to gain additional information necessary to make a full Medicaid eligibility determination, we anticipate that States will instead merely highlight the additional information individuals need to fill out on the full Medicaid application form. We expect the State burden would be, an ongoing burden of, on average, 15 minutes per LIS applicant (400,000 total) to provide the required disclosures/consent and highlight the additional information individuals need to fill out on the full Medicaid application form. The full Medicaid application form will not need to be revised.

We believe most individuals would not have an additional burden associated with this provision because we assume that the vast majority (85 percent) of individuals will not respond to the States' request for additional information. In reaching this conclusion, we note that individuals are generally discouraged from applying for Medicaid by burdensome application processes and repeated requests for additional information. Given that the determination of full Medicaid for LIS applicants would inevitably require individuals to face these hurdles, we believe it is reasonable to conclude that only around 15 percent of individuals will respond to States' requests for information. States will then only need to process and make full Medicaid determinations for the remainder of individuals (15 percent or 60,000 individuals [400,000 LIS applicants $\times$ 0.15]), which will take about 1 hour at \$48.10/hr. The annual State burden for sending individuals the new information is 100,000 hours (400,000 LIS applicants $\times$ 0.25 hr) at a cost of \$4,810,000 (100,000 hr $\times$ \$48.10/hr).

For processing the information received from individuals, we estimate an annual State burden of 60,000 hours (60,000 applicants $\times$ 1 hr/application) at a cost of \$2,886,000 (60,000 hr $\times$ \$48.10/hr).

The total State burden is 160,000 hours (100,000 hr + 60,000 hr) and \$7,696,000 (\$4,810,000 + \$2,886,000).

However, when taking into account the 50 percent Federal contribution to Medicaid program administration, the

estimated State cost is \$3,848,000 (\$7,696,000 $\times$ 0.50).

For individuals to respond to States' request for information (that is, complete the remainder of the full Medicaid application), we estimate that it will take 4 hours at \$21.98/hr. In aggregate, we estimate an annual burden of 240,000 hours (60,000 applicants $\times$ 4 hr/application) at a cost of \$5,275,200 (240,000 hr $\times$ \$21.98/hr).

New requirements in this final rule at § 435.911(e)(1) require States to accept, via secure electronic interface, the SSA LIS leads data, while § 435.911(e)(2) requires that States treat receipt of the leads data as an application for the MSPs. Section 435.911(e)(3) requires States to accept information provided through the leads data relating to a criterion of eligibility without further verification unless information available to the agency is not reasonably compatible with information provided by or on behalf of the individual, while § 435.911(e)(4) requires States to refrain from requesting information from individuals already provided through leads data unless information available to the agency is not reasonably compatible with information provided by or on behalf of the individual. Sections 435.911(e)(5) and (6) require States to seek additional information as needed to determine MSP eligibility. Section 435.911(e)(7) requires State agencies to promptly determine MSP eligibility. Finally, § 435.911(e)(8) requires further steps if the leads data does not support a determination of eligibility.

We estimate that as a result of finalized provisions in § 435.911(e), States will be able to adjudicate over 90 percent of MSP applications for LIS enrollees without gathering additional documentation from the applicants. Therefore, as there are about 400,000 new LIS applicants approved annually in 51 States (all 50 States and the District of Columbia),⁵⁶ we estimate that 360,000 (400,000 $\times$ 0.9) of those applicants will be able to enroll in an MSP without providing additional income and resource related documentation, and without the State receiving and adjudicating such data.

The finalized provisions in § 435.911(e) are associated with a reduction in burden for States and beneficiaries associated with

application completion and eligibility determinations at the State Medicaid agency, including: reduced verification work for States that do not need to adjudicate the leads data for approximately 360,000 new LIS applicants; reduced paperwork to submit for the LIS applicants applying to MSPs in 51 States; reduced burden for LIS applicants who were previously expected to obtain, print, copy, mail and fax documents to the State to support the State's verification of income and resources; and reduced LIS applicant burden related to the need for public transportation and cell phone usage in relation to said document activities (obtaining, printing, copying, mailing, and faxing).

Reduced Verification Burden. We estimate that the finalized provisions in § 435.911(e) will save an Eligibility Interviewer 25 minutes (0.42 hr) per eligibility determination at \$48.10/hr for the 360,000 new LIS applicants from reduced paperwork to review because of the provisions in § 435.952(e) that require States to accept self-attestation of interest and dividend income, non-liquid resources, burial funds, and the face value of life insurance by individuals applying to MSPs and the reduced verification work due to considering the leads data as verified.

In aggregate, we estimate an annual savings of minus 151,200 hours (360,000 applicants $\times$ 0.42 hr) and minus \$7,272,720 (151,200 hr $\times$ \$48.10/hr). Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State savings is approximately minus \$3,636,360 (\$7,272,720 $\times$ 0.5).

Reduced LIS Applicant Burden for Applying to MSPs. We estimate these provisions will reduce the time needed for LIS applicants applying to MSPs to submit paperwork from 4 hours to 15 minutes, for a savings of 3.75 hours per applicant per year across all 51 States. In aggregate, we estimate an annual savings of minus 1,350,000 hours (360,000 applicants $\times$ 3.75 hr) and minus \$29,673,000 (1,350,000 hr $\times$ \$21.98/hr).

Reduced Burden for LIS Applicants to Support the State's Verification of Income and Resources. We also estimate LIS applicant non-labor savings from the changes to § 435.911(e) from public transportation, printing, copying, postage, and fax expenses to be about \$10 [(\$4.50 postage for small package or \$1.75/page for faxing) + \$4 roundtrip bus ride (from home to printing or copying place to post office and back home) + \$0.13/page for printing or copying)] per LIS applicant per year for all 51 States (including DC). In

⁵⁶ Over the past 5 years (2017–2021), SSA approved an average of 394,025 LIS applications annually. <https://www.ssa.gov/open/data/Data-about-Extra-Help-with-Medicare-Prescription-Drug-Plan-Cost.html>. We do not have estimates for any potential increases in application volume or approval rates based on changes to LIS eligibility criteria in the Inflation Reduction Act.

aggregate, we estimate an annual non-labor savings of minus \$3,600,000 (360,000 enrollees $\times$ \$10/enrollee).

Finalized § 435.952(e)(1) through (4) is unchanged from the proposed rule, except for applying a delayed compliance date of April 1, 2026 for States to come into full compliance with all of these provisions, and newly requiring States to accept self-attestation of certain income and resources for MSP applicants and beneficiaries—including dividend and interest income, burial funds of spouse and individual, and the face value of life insurance policy unless the State has information that is not reasonably compatible with the applicant's attestation. Because around 10 States (including DC) (about 20 percent of all 51 States, including DC) do not have asset tests and do not require documentation to complete an eligibility determination or redetermination at the State Medicaid agency, we expect the savings from the self-attestation provisions would only apply to approximately 8.4 million individuals (80 percent of 11 million applications/renewals⁵⁷ minus 400,000 individuals who applied to LIS counted previously in this final rule) in the other 41 States. We estimate that under § 435.952(e)(1) through (4), these 8.4 million individuals will see a reduction from 4 hours to 2 hours, for a savings of 2 hours per individual, to complete an application/renewal in all 41 States. In aggregate, we estimate an annual savings of minus 16,800,000 hours (8,400,000 individuals $\times$ 2 hr) and minus \$369,264,000 (16,800,000 hr $\times$ \$21.98/hr).

We also estimate the non-labor savings under § 435.952(e)(1) through (4) to be about \$10 [(\$4.50 postage for small package or \$1.75/page for faxing) + \$4 roundtrip bus ride (to/from post office, printing/copying place and home) + \$0.13/page for printing/copying] per MSP applicant/renewal per year for all 51 States. In aggregate, we estimate an annual non-labor savings of minus \$84,000,000 (8,400,000 individuals $\times$ \$10/individual).

Reduced State Burden for Verification of New MSP Applicants. We also estimate that § 435.952(e)(1) through (4) will save an Eligibility Interviewer 15 minutes (0.25 hr) per eligibility determination or renewal for these

8,400,000 applicants/beneficiaries. In aggregate, we estimate an annual labor savings for States of minus 2,100,000 hours (8,400,000 applications $\times$ 0.25 hr) and minus \$101,010,000 (2,100,000 hr $\times$ \$48.10/hr). Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State savings is approximately minus \$50,505,000 ($\$101,010,000 \times 0.5$).

State Burden for Verification of the Face Value of Life Insurance. We are also finalizing § 435.952(e)(4) to require States to develop a verification process to determine the cash surrender value of life insurance policies over \$1,500. We anticipate this will be a change for 10 States in their process for verifying the cash surrender value of life insurance policies over \$1,500. We do not anticipate an impact in around 16 States that are using authority in section 1902(r)(2) of the Act to disregard the cash surrender value of life insurance in whole or part. We estimate that 25 of the remaining 35 States (51 States – 16 States) will choose to use authority in section 1902(r)(2) of the Act to disregard the cash surrender value of life insurance rather than opting to verify the cash surrender value of life insurance. As noted previously in this final rule, we expect that this change will only impact 20 percent or approximately 10 States (51 States $\times$ 0.2).⁵⁸ Based on enrollment in past years, we anticipate that all 51 States will adjudicate 1,000,000 new MSP applications a year plus 10 million renewals. However, we anticipate this policy will only affect 2 percent of applicants and beneficiaries, or 44,000 individuals across 10 States (11,000,000 individuals $\times$ 0.02 of applicants $\times$ 0.2 of States) because of the small number of people who could both afford this type of life insurance (which is much more expensive than term life insurance) and are also likely to apply for MSPs (which tends to be lower-income individuals).

The burden associated with § 435.952(e)(4) will consist of the time and effort for eligibility workers in 10 States to collect information regarding the cash surrender value of life insurance from 44,000 applicants. The savings associated with § 435.952(e)(4) consists of eligibility workers in 10 States not having to spend time coaching 44,000 applicants how to

gather and find information on the cash surrender value of life insurance and eligibility workers in 10 States not having to review life insurance documents for individuals with life insurance less than \$1,500.

Under § 435.952(e)(4), we estimate that it will take an Eligibility Interviewer 1 hour at \$48.10/hr to verify the cash surrender value of each life insurance policy over \$1,500. In aggregate, we estimate an annual burden of 44,000 hours (1 hr $\times$ 44,000 individuals) at a cost of \$2,116,400 (44,000 hr $\times$ \$48.10/hr). Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State share is approximately \$1,058,200 ($\$2,116,400 \times 0.5$).

Reduced State Burden for Verification of the Face Value of Life Insurance. We estimate the changes under § 435.952(e)(4) will save Eligibility Interviewers an average 45 minutes (0.75 hr) per applicant from not needing to coach applicants on how to gather and find information on the cash surrender value of life insurance. In aggregate, we estimate an annual savings of minus 33,000 hours (44,000 applicants $\times$ 0.75 hr) and \$1,587,300 (33,000 hr $\times$ \$48.10/hr). Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State savings is approximately minus \$793,650 ($\$1,587,300 \times 0.5$).

We also estimate State savings under § 435.952(e)(4) from eligibility workers not having to review life insurance documents for individuals with life insurance less than \$1,500. We anticipate it will take an eligibility worker about 10 minutes (0.167 hr) to review a life insurance document and that this savings will affect 3 percent or 66,000 applicants and beneficiaries or individuals (11,000,000 individuals $\times$ 0.03 $\times$ 0.2) across 10 States. In aggregate, we estimate an annual savings of minus 11,022 hours (66,000 individuals $\times$ 0.167 hr) and minus \$530,158 ($-11,022 \text{ hr} \times \$48.10/\text{hr}$). Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State savings is approximately minus \$265,079 ($\$530,158 \times 0.5$).

As indicated in Table 3, we estimate a net State annual burden reduction of minus 2,091,222 hours and minus \$50,293,889.

⁵⁷ Based on States adjudicating 1.5 million new applications and 10 million for redetermination annually.

⁵⁸ We are not including impacts for territories in these estimates because territories do not have any enrollment in MSPs.

TABLE 3—SUMMARY OF STATE BURDEN FOR FACILITATING MEDICAID ENROLLMENT THROUGH LIS LEADS DATA AND SELF-ATTESTATION PROVISIONS

Regulation section(s)	Number of respondents	Total number of responses	Time per response (hours)	Total time (hours)	Hourly labor cost (\$/hr)	Total labor cost (\$)	Total state share (\$)	Total non-labor cost (\$)	Frequency
\$ 435.911	51 States	400,000	0.25	100,000	48.10	4,810,000	2,405,000	0	Annual.
\$ 435.911	51 States	60,000	1	60,000	48.10	2,886,000	1,443,000	0	Annual.
§§ 435.911 and 435.952	51 States	(7,059)	0.42	(151,200)	48.10	(7,272,720)	(3,636,360)	0	Annual.
\$ 435.952	51 States	(8,400,000)	0.25	(2,100,000)	48.10	(101,010,000)	(50,505,000)	0	Annual.
\$ 435.952	10 States	4,400	1	44,000	48.10	2,116,400	1,058,200	0	Annual.
\$ 435.952	10 States	(4,400)	0.75	(33,000)	48.10	(1,587,300)	(793,550)	0	Annual.
\$ 435.952	10 States	(6,600)	0.167	(11,022)	48.10	(530,158)	(265,079)	0	Annual.
Total	51 States	(7,953,659)	Varies	(2,091,222)	48.10	(100,587,778)	(50,293,889)	0	Annual.

As indicated in Table 4, for individuals, we estimate an annual burden reduction of minus 17,910,000 hours and minus \$481,261,800.

TABLE 4—SUMMARY OF INDIVIDUAL BURDEN FOR FACILITATING MEDICAID ENROLLMENT THROUGH LIS LEADS DATA AND SELF-ATTESTATION PROVISIONS

Regulation section(s)	Number of respondents	Total number of responses	Time per response (hours)	Total time (hours)	Hourly labor cost (\$/hr)	Total labor cost (\$)	Total state share (\$)	Total non-labor cost (\$)	Frequency
\$ 435.911	60,000 individuals	60,000	4	240,000	21.98	5,275,200	0	5,275,200	Annual.
§§ 435.911 and 435.952	360,000 individuals	(360,000)	(3.75)	(1,350,000)	21.98	(29,673,000)	0	(29,673,000)	Annual.
§§ 435.911 and 435.952	360,000 individuals	(360,000)	0	n/a	n/a	0	(3,600,000)	(3,600,000)	Annual.
\$ 435.952	8,400,000 individuals ..	(8,400,000)	(2)	(16,800,000)	21.98	(369,264,000)	0	(369,264,000)	Annual.
\$ 435.952	8,400,000 individuals ..	(8,400,000)	0	n/a	n/a	0	(84,000,000)	(84,000,000)	Annual.
Total	8,820,000 individuals ..	(17,580,000)	Varies ...	(17,910,000)	Varies	(393,661,800)	(87,600,000)	(481,261,800)	Annual.

When combined (see Table 5), we estimate an annual burden reduction of minus 20,001,222 hours and minus \$531,555,689.

TABLE 5—SUMMARY OF STATE AND INDIVIDUAL BURDEN FOR FACILITATING MEDICAID ENROLLMENT THROUGH LIS LEADS DATA AND SELF-ATTESTATION PROVISIONS

Respondent type	Number of respondents	Total number of responses	Total time (hours)	Hourly labor cost (\$/hr)	Labor cost (\$)	Non-labor cost (\$)	Total cost (\$)	Frequency
States	51	(7,953,659)	(2,091,222)	Varies	(50,293,889)	0	(50,293,889)	Annual.
Individuals	8,760,000	(17,580,000)	(17,910,000)	Varies	(393,661,800)	(87,600,000)	(481,261,800)	Annual.
Total	8,820,051	(25,533,659)	(20,001,222)	Varies	(443,955,689)	(87,600,000)	(531,555,689)	Annual.

2. Defining “Family of the Size Involved” for the Medicare Savings Program Groups Using the Definition of “Family Size” in the Medicare Part D Low-Income Subsidy Program

As described in section II.A.2. of this final rule, § 435.601 aligns the definition of “family size” for purposes of MSP eligibility with that of the LIS program. Specifically, we newly define “family of the size involved” to include at least the individuals included in the definition of “family size” in the LIS program: the applicant, the applicant’s spouse, and all other individuals living in the same household who are related to and dependent on the applicant or applicant’s spouse. While some States

either already define family size to match the LIS definition or use a family size that is less restrictive than this definition, we estimated in the proposed rule that 10 States use SSI methodologies to determine family size, which means that these States only use an individual or couple and any other deemed individuals as part of the family size. As such, we estimated in the proposed rule that 10 States will need to submit a SPA to change their definition of family size for MSP eligibility groups to comply with this regulation. However, based on subsequent internal analysis, we believe our proposed estimate of 10 States was too low and that 35 States may be

impacted by the changes to this definition of family size. As such, we have revised our active estimate to reflect a higher impact.

We estimate that it will take each State 3 hours to submit a SPA to update the definition of “family size” in their Medicaid State plans. Of those 3 hours, we estimate it will take a Business Operations Specialist 2 hours at \$80.08/hr and a General Operations Manager 1 hour at \$118.14/hr to update and submit each SPA to CMS for review. In aggregate, we estimate a one-time burden of 105 hours (35 States × 3 hr) at a cost of \$9,741 (35 States × [2 hr × \$80.08/hr] + [1 hr × \$118.14/hr]) for completing the necessary SPA updates.

Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State cost is approximately \$4,871 (\$9,741 × 0.5). Under § 423.772, “family size” is defined to include the applicant, the applicant’s spouse (if the spouse is living in the same household with the applicant), and all other individuals living in the same household who are related to the applicant and dependent on the applicant or applicant’s spouse for one-half of their financial support. By requiring that a State’s definition of “family of the size involved” include “at least” the individuals described in § 423.772 for purposes of the MSP groups, States would retain flexibility to include other individuals who are not described in § 423.772. Additionally, this requirement would not affect the States’ ability to adopt a different reasonable definition of the phrase for purposes of other eligibility groups. As such, we estimate that it will take each State on average 200 hours to

develop questions and code the changes to its Medicaid application(s) to identify other third parties in the households of MSP applicants. These changes will impact any of the State’s applications that focus on non-MAGI eligibility groups only and do not collect information about other household members. As such, it would apply to both a non-MAGI-only application or an MSP-only application. On the other hand, a single streamlined application that individuals use to apply both to Medicaid and the Marketplace already captures information about third parties in the applicant’s household and would not be impacted. We will be revising the model MSP-only form to take into account these changes to family size, which States have the option to use as well. As such, each individual State may have greater or lesser impact depending on what application form(s) it uses. Of the 200 hours, we estimate it will take a Database and Network Administrator and Architect 50 hours at

\$106.16/hr and a Computer Programmer 150 hours at \$98.84/hr. In aggregate, we estimate a one-time burden of 7,000 hours (35 States × 200 hr) at a cost of \$704,690 (35 States × [(50 hr × \$106.16/hr) + (150 hr × \$98.84/hr)]) for completing the necessary updates to the Medicaid application. Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State cost is approximately \$352,345 (\$704,690 × 0.5). These changes do not revise or create additional burden on applicants as the new questions will be in lieu of prior questions regarding “family size.” As such, the removed/added questions require programming changes that have a neutral impact on applicants. *Summary:* As demonstrated in Table 6, when taking into account the Federal contribution, we estimate a one-time State burden of 7,105 hours at a cost of \$357,216.

TABLE 6—SUMMARY OF STATE BURDEN FOR MSP FAMILY SIZE DEFINITION CHANGES

Regulation section(s)	Number of respondents	Total number of responses	Time per response (hours)	Total time (hours)	Hourly labor cost (\$/hr)	Total labor cost (\$)	Total state share (\$)	Total non-labor cost (\$)	Frequency
§ 435.601	35 States	35	3	105	Varies	9,741	4,871	0	One time.
§ 435.601	35 States	35	200	7,000	Varies	704,690	352,345	0	One time.
Total	35 States	70	203	7,105	Varies	714,431	357,216	0	One time.

MSP Enrollment Increases as a Result of Facilitating Enrollment Through Medicare Part D LIS Leads Data To calculate the impact of streamlining enrollment for persons in the LIS program, we analyzed data from the Medicare Integrated Data Repository (IDR) from July 2020. We determined the number of people who were enrolled in the LIS program by: (1) State; (2) the category of LIS benefit they received; and (3) whether or not they were also enrolled in Medicaid. We identified 13.1 million persons receiving the Part D LIS, of which 11.1 million were enrolled in Medicaid and 2.0 million were not. We developed a regression using the percentage of LIS enrollees who were also dually eligible as the dependent variable, and used several policy factors as independent variables: State use of LIS leads data to make MSP eligibility determinations; verification policies and procedures; grace period for providing verifications after initial denial;

redetermination grace period; counting children towards income; income disregard; and asset disregard. While the latter three policies would not change under this final rule, we believed that they may explain some of the variation in the percentage of LIS recipients who are dually eligible. We found that this model explained some amount of the variation in the percentage of LIS enrollees who are enrolled as dually eligible, and that the most significant variable was the State use of LIS leads data to make MSP eligibility determinations. Other policies appeared to have weak correlations. The model suggested that the use of these policies—and in particular the use of the Part D LIS leads data—would result in an average increase in the percentage of LIS recipients who are dually eligible from 84.6 percent to 88.0 percent (an increase of 3.4 percentage points). We estimated that about 0.44 million additional persons would have been enrolled in the QMB eligibility group as

a result of these changes, had they been made in 2020. We assume that the increase in enrollment will be among people who do not qualify for full Medicaid benefits. We assumed these enrollees, as QMBs, would receive coverage of their Medicare Part B premium. The premium is \$164.90 per month in 2023. We also assumed that beneficiaries would receive Medicaid coverage for cost sharing for Medicare services. To calculate future impacts to enrollment, we assumed that the increase in enrollment due to this provision would grow at the same rate as Medicaid enrollment among aged persons and persons with disabilities. We estimate that this would increase enrollment by about 0.54 million persons by FY 2029 and would increase total Medicaid spending for Medicaid coverage of Medicare premiums and cost sharing by \$6.26 billion from FY 2025 through FY 2029. Detailed estimates are shown in Table 7.

TABLE 7—IMPACT OF FACILITATING MEDICAID ENROLLMENT THROUGH MEDICARE PART D LIS LEADS DATA ON MEDICAID EXPENDITURES AND ENROLLMENT

[Expenditures in millions of dollars, enrollment in millions of person-year equivalents]

	2025	2026	2027	2028	2029	2025–2029
Enrollment	0.12	0.38	0.52	0.53	0.54	.....
Total Spending	380	1,160	1,560	1,570	1,590	6,260
Federal Spending	220	670	900	900	920	3,610

3. Automatically Enroll Certain SSI Recipients Into the QMB Group

As described in section II.A.3. of this final rule, § 435.909 newly requires that States deem certain individuals who are eligible for Medicare Part A, and who are SSI beneficiaries eligible for QMB coverage, without requiring an application. In particular, § 435.909 newly requires that: (1) States with 1634 agreements must deem SSI recipients eligible for QMB coverage who are entitled to premium-free Medicare Part A; (2) States without 1634 agreements must deem SSI recipients eligible for QMB coverage who are entitled to premium-free Medicare Part A and have been determined eligible for Medicaid under either § 435.120 or § 435.121; and (3) Part A buy-in States must deem individuals eligible for QMB coverage if the individual is determined eligible for Medicaid under either § 435.120 or § 435.121, entitled to SSI, only qualifies for premium Part A, and is enrolled in Part B.

To implement these new requirements, States will need to identify Medicare-eligible SSI recipients to enroll them in the MSPs. States will also need to trigger deeming of Medicare-eligible SSI recipients to QMB by making eligibility systems changes to trigger QMB enrollment once the SSI-individual is Medicare eligible. Current regulations do not allow State Medicaid agencies to forgo an eligibility determination for Medicaid beneficiaries who are eligible for SSI when they become newly eligible for Medicare Part A and B. Therefore, this new requirement will require system changes for all 51 States (including DC).

While these deeming provisions are intended to enroll more SSI recipients in QMB, this rulemaking will not reach all SSI recipients eligible for QMB. We estimate currently 16 percent or 566,556 (3,540,975 × 0.16) SSI recipients are eligible but not enrolled in QMB, and nearly 500,000 new SSI recipients who are enrolled in Medicaid under either § 435.120 or § 435.121 will enroll in QMB as a result of the changes to § 435.909(b).

As discussed in section II.A.3. of this final rule, in the 34 States with a 1634

agreement, the Medicaid agency automatically enrolls the SSI recipients in Medicaid following a data exchange with SSA and then we automatically initiate Part B buy-in for the individual through the “buy-in data exchange.” In the remaining States, individuals must submit a separate application to the State Medicaid agency to be determined eligible for Medicaid.

We do not automatically initiate Part B buy-in for SSI individuals who live in SSI criteria and 209(b) States; rather, States must initiate Part B buy-in once the SSI recipient has separately applied for and been determined eligible for the mandatory SSI or 209(b) group. Additionally, SSI recipients who live in group payer States and are eligible for premium Part A are still required to go through a complicated two-step application process to establish QMB eligibility once an individual is determined eligible for the mandatory SSI or 209(b) groups and has been enrolled in Part B pursuant to the State’s buy-in agreement.

Under this final rule, the application process for SSI recipients who live in criteria and 209(b) States will remain the same and so will the two-step application process to establish QMB eligibility for SSI recipients living in group payer States and having premium part A.

Based on SSA data and internal CMS analysis of the 566,556 SSI recipients eligible for QMB but not enrolled, we estimate almost 83 percent (469,820 = 566,556 × 0.829257) were likely eligible for premium-free Part A, while approximately 17 percent (96,736 = 566,556 × 0.170744) were eligible for premium Part A. Of the 469,820 who were eligible for premium-free Part A, we estimate that approximately 86 percent (405,963 = 469,820 × 0.864082) reside in States with 1634 agreements, and approximately 14 percent (63,857 = 469,820 × 0.135918) reside in 209(b) or SSI criteria States. Because Medicaid is automatic in States with 1634 agreements, we estimate that 405,963 individuals (all of the previously-mentioned SSI recipients in 1634 States) will be automatically enrolled in QMB under this new provision.

In contrast, we estimate that only 65 percent of the previously-mentioned 63,857 SSI recipients in 209(b) States or SSI criteria States, or 41,507 individuals (63,857 individuals × 0.65), will be enrolled under the new provision. This is because it is unlikely that all SSI recipients who live in SSI or 209(b) States will complete the Medicaid application process in their State.

Of the 96,736 individuals eligible for premium Part A, we estimate 33 percent (31,923 = 96,736 × 0.33) are in Part A buy-in States and 67 percent (64,813 = 96,736 × 0.67) of those eligible for premium Part A are in group payer States, where deeming will be optional. We estimate that 95 percent (30,327 = 31,923 × 0.95) of individuals in Part A buy-in States who are eligible for premium Part A will enroll as a result of the new provision because we estimate that all of those individuals live in States with 1634 agreements. However, for the individuals eligible for premium Part A in group payer States where deeming will be optional, we expect some more populous States will use this option, so we are estimating 33 percent (21,388 = 64,813 × 0.33) of all individuals with premium Part A living in group payer States will newly enroll.

Therefore, we estimate a total of 499,185 individuals (405,963 + 41,507 + 30,327 + 21,388) will newly enroll without the need to complete an application. We estimate that those individuals will each save 2 hours from not filling out Medicaid applications and compiling associated documentation (going from 2 to 0 hours) at \$21.98/hr. We estimate an annual savings of minus 998,370 hours (499,185 individuals × 2 hr) and minus \$21,944,173 (998,370 hr × \$21.98/hr).

All 51 States (including DC) will need to make eligibility systems changes to deem an SSI individual in QMB once they are eligible for Medicare. We estimate it will take a Computer Programmer an average of 180 hours per State at \$98.84/hr to make systems changes to set their systems to search for Medicare eligibility in Federal systems and then enroll that individual in QMB. In aggregate, we estimate a one-time burden of 9,180 hours (51 States × 180

hr) at a cost of \$907,351 (9,180 hr × \$98.84/hr). Taking into account the 50 percent Federal contribution to Medicaid program administration, the estimated State share is approximately \$453,676 (\$907,351 × 0.5).

We also estimate that this provision will result in an annual reduction of burden for the State to no longer review and adjudicate QMB applications from SSI recipients. We estimate this will save an Eligibility Interviewer 1 hour

(going from 1 hour to 0) per QMB determination at \$48.10/hr. We also estimate that States conduct QMB eligibility determinations for approximately 250,000 SSI individuals across 51 States, which will no longer be necessary. In aggregate, we estimate an annual burden savings of minus 250,000 hours (250,000 individuals × – 1 hr/response) and minus \$12,025,000 (– 250,000 hr × \$48.10/hr). Taking into account the 50 percent Federal

contribution to Medicaid program administration, the estimated State savings is approximately minus \$6,012,500 (\$12,025,000 × 0.5).

Summary: As demonstrated in Table 8, when taking into account the Federal contribution, we estimate a State savings of minus 240,820 hours and minus \$5,558,824. We also estimate individual savings of minus 998,370 hours minus \$21,944,173.

TABLE 8—SUMMARY OF STATE AND INDIVIDUAL BURDEN FOR AUTOMATIC ENROLLMENT OF CERTAIN SSI RECIPIENTS INTO QMB

Regulation section(s)	Number of respondents	Total number of responses	Time per response (hours)	Total time (hours)	Hourly labor cost (\$/hr)	Total labor cost (\$)	Total state share (\$)	Total non-labor cost (\$)	Frequency
\$ 435.909	51 States	51	180	9,180	98.84	907,351	453,676	0	One-time.
\$ 435.909	51 States	(250,000)	(1)	(250,000)	48.10	(12,025,000)	(6,012,500)	0	Annual.
<i>Subtotal: States</i>	<i>51 States</i>	<i>(249,949)</i>	<i>Varies</i>	<i>(240,820)</i>	<i>Varies</i>	<i>(11,117,649)</i>	<i>(5,558,824)</i>	<i>0</i>	<i>Varies.</i>
\$ 435.909	499,185 individuals.	(499,185)	(2)	(998,370)	21.98	(21,944,173)	n/a	0	Annual.
Total	499,236	(749,134)	Varies	(1,239,190)	Varies	(33,061,822)	(5,558,824)	0	Varies.

QMB Enrollment Increases as a Result of Automatically Enrolling Certain SSI Recipients Into the QMB Group

To calculate the impact of automatically enrolling SSI recipients into QMB Medicaid coverage, we examined data on SSI recipients and their health care coverage.⁵⁹ As of 2017, about 17 percent of all SSI recipients had Medicare coverage but were not dually enrolled in Medicaid.

First, we estimated how many persons would enroll who already receive Medicare Part A without paying a premium. We estimated that there are 2.6 million people enrolled in SSI who are enrolled in Part A and do not pay the premium. Of these, we estimated about 82 percent reside in “1634 States” (about 2.1 million) and therefore are automatically enrolled in Medicaid. Of the remaining 0.48 million, we have assumed that 90 percent would enroll in the QMB group and receive Medicare Part B premium and cost-sharing assistance. We estimated those benefits to be about \$5,000 per enrollee per year for 2023.

Second, we estimated how many persons would enroll who receive Medicare Part A but have to pay a premium. We estimate that there are 5.2 million such people enrolled in SSI. We estimated that 34 percent of this population lives in States that do not automatically enroll these individuals in the QMB group. Of States that do not automatically enroll these individuals in the QMB group, we assumed that about 20 percent of States would use the option provided in this final rule, and that about 50 percent of this population would be enrolled in the QMB group as a result.

Third, we also considered that many of these individuals are already enrolled as dually eligible in Medicare and Medicaid, but not as QMBs. For current dually eligible individuals, we assumed that they were already receiving Medicaid coverage for the Part B premium and most Medicare cost sharing. For those not currently enrolled as a dually eligible, we assumed that they would be eligible for Medicaid to pay for the Part B premium and

Medicare cost sharing, and the Part A premium if they are required to pay it. We estimated that 75 percent of new QMBs were already enrolled as dually eligible.

To calculate future impacts to enrollment, we assumed that the increase in enrollment due to this provision would grow at the same rate as Medicaid enrollment among aged persons and persons with disabilities.

We estimate that this provision would increase QMB enrollment among persons who are not currently dually eligible by 0.16 million by FY 2029. We also estimate about 0.50 million additional QMBs who are already dually eligible, of whom 0.14 million would have their Part A premiums paid by Medicaid under this provision. We estimate that this provision would increase total Medicaid spending by \$10.23 billion from FY 2025 through FY 2029 for Medicaid coverage of Medicare premiums and cost sharing and, in some cases, other Medicaid benefits. Detailed estimates are shown in Table 9.

TABLE 9—IMPACT OF AUTOMATICALLY ENROLLING CERTAIN SSI RECIPIENTS INTO QMB PROGRAM ON MEDICAID EXPENDITURES AND ENROLLMENT

[Expenditures in millions of dollars, enrollment in millions of person-year equivalents]

	2025	2026	2027	2028	2029	2025–2029
Additional QMB Enrollees	0.28	0.30	0.30	0.30	0.30	.....
Previous Dual Eligibles	0.13	0.14	0.14	0.14	0.14	.....
New Medicaid Enrollees	0.15	0.16	0.16	0.16	0.16	.....
Total Spending	2,010	2,020	2,040	2,060	2,100	10,230

⁵⁹ <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p70br-171.pdf>.

TABLE 9—IMPACT OF AUTOMATICALLY ENROLLING CERTAIN SSI RECIPIENTS INTO QMB PROGRAM ON MEDICAID EXPENDITURES AND ENROLLMENT—Continued

[Expenditures in millions of dollars, enrollment in millions of person-year equivalents]

	2025	2026	2027	2028	2029	2025–2029
Federal Spending	1,150	1,160	1,170	1,190	1,200	5,870

4. Other Provisions To Facilitate Medicaid Enrollment

For other provisions that would facilitate Medicaid enrollment (including the definition of family size; and making the QMB effective date earlier), we assumed that these

provisions would increase enrollment by about 0.1 percent among aged enrollees and enrollees with disabilities and would have a negligible impact on other categories of enrollees. We estimate that this would increase enrollment by about 0.02 million person-year equivalents by 2029. These

provisions are estimated to increase Medicaid spending by \$2.07 billion from FY 2025 through FY 2029 for Medicaid coverage of Medicare premiums and cost sharing and, in some cases, other Medicaid benefits. Detailed estimates are shown in Table 10.

TABLE 10—IMPACT OF OTHER PROVISIONS TO FACILITATE ENROLLMENT ON MEDICAID EXPENDITURES AND ENROLLMENT

[Expenditures in millions of dollars, enrollment in millions of person-year equivalents]

	2025	2026	2027	2028	2029	2026–2029
Enrollment	0.01	0.02	0.02	0.02	0.02	0.02
Total Spending	120	380	510	530	530	2,070
Federal Spending	70	220	290	300	310	1,190

5. Impacts on Medicare

It is likely that those SSI enrollees newly gaining Medicaid coverage would also have higher Medicare costs following enrollment. Primarily, receiving cost-sharing assistance for Medicare would lead to these individuals seeking out more care that may have been difficult to afford previously, also known as induction.

To estimate these impacts, we reviewed research on the effects of changing out-of-pocket costs on total health care costs, and specifically on Medicare. In general, we have historically estimated that reductions in out-of-pocket costs would increase total spending by \$0.60 to \$1.30 for every \$1.00 reduction in out-of-pocket costs. Among research on health care costs, we relied primarily on research that examined the impacts on changing Medicare out-of-pocket costs.⁶⁰

This research is useful, particularly because of the analysis reviewing cost-sharing among those Medicare enrollees without any other coverage, those with supplemental coverage (such as “Medigap” plans or retiree health benefits), and those with Medicaid. First, the analysis found that Medicare enrollees without other coverage had an average of \$13,693 in costs, of which

\$2,399 was paid out of pocket (18 percent). Among those with supplemental coverage, average costs were \$14,349, with \$594 paid out of pocket (4 percent) and \$2,095 paid through supplemental coverage (15 percent). Enrollees with Medicaid coverage had \$26,181 in average costs, with \$209 paid out of pocket (1 percent) and \$3,190 paid by Medicaid (12 percent). A significant amount of cost differences is likely due to health status. Most notably, those with Medicaid coverage are on average older and more likely to have a disability or chronic condition, which would result in higher costs regardless of who pays for care.

The analysis also examines the effect of changing Medicare cost-sharing structures on total, Medicare, and out-of-pocket spending. While the specific proposed benefit changes are not related to this final rule, it does provide the relative magnitude of changes between Medicare and out-of-pocket costs. The analysis found a larger change in costs for those without any other coverage than those with supplemental coverage. For those without other coverage, out-of-pocket costs decreased by \$428 while total costs increased by \$764 (or \$1.80 for every \$1.00 reduction in out-of-pocket costs). For those with supplemental coverage, there was a decrease of \$158 in out-of-pocket costs and an increase of \$130 in total costs (or \$0.80 for every \$1.00 reduction in out-of-pocket costs).

We also reviewed how many Medicare enrollees have supplemental

coverage or Medicaid. Research from the Kaiser Family Foundation recently looked at this.⁶¹ This analysis found that 26 percent of Medicare beneficiaries had annual income of less than \$20,000 (which is reasonably close to the SSI income limit of \$1,767 monthly, which would be \$21,204 annually). Of these beneficiaries, 37 percent had Medicaid and 11 percent had supplemental coverage. Excluding those with Medicaid and assuming the two groups are mutually exclusive, 17 percent of low-income beneficiaries without Medicaid had supplemental coverage. We believe it is reasonable to assume that very few beneficiaries had both Medicaid and other supplemental coverage.

We estimated the impact assuming that the overall increase in total costs would be \$0.80 for every \$1.00 reduction in out-of-pocket costs. For those without supplemental coverage, this would be expected to result in an increase of 14 percent in total costs and 20 percent in Medicare costs, and for those without supplemental coverage, increases of 3 percent for total costs and 10 percent for Medicare costs. Using the analysis on SSI enrollees and coverage, this is a weighted average of an 18 percent increase in Medicare costs for those newly gaining Medicaid.

⁶⁰ B Garrett, A Gangopadhyaya, A Shartzter, and D Arnos, “A Unified Cost-Sharing Design for Medicare: Effects on Beneficiary and Program Spending,” The Urban Institute, July 2019. https://www.urban.org/sites/default/files/publication/100528/a_unified_cost-sharing_design_for_medicare_effects_on_beneficiary_an_1.pdf.

⁶¹ W Koma, J Cubanski, and T Neuman, “A Snapshot of Coverage Among Medicare Beneficiaries in 2018,” Kaiser Family Foundation, March 23 2021. <https://www.kff.org/medicare/issue-brief/a-snapshot-of-sources-of-coverage-among-medicare-beneficiaries-in-2018/>.

To calculate the annual impacts, we multiply the Medicare per enrollee costs each year by 18 percent and by the number of SSI enrollees newly receiving Medicaid, and then adjust for cost-sharing to calculate the Federal Medicare spending amounts. This excludes those who were previously dually eligible but not QMBs. Using total Medicare per enrollee costs (as projected in the 2022 Trustees Report ⁶²), we project that this would increase Medicare spending by \$7.6 billion over 2025 to 2029 under this

⁶² “2022 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds.” <https://www.cms.gov/files/document/2022-medicare-trustees-report.pdf>.

final rule. Annual impacts are shown in Table 11.

TABLE 11—PROJECTED CHANGE IN MEDICARE EXPENDITURES FROM ADDITIONAL SSI ENROLLEES RECEIVING MEDICAID
[In millions of real dollars]

	Medicare expenditures
2025	600
2026	1,400
2027	1,800
2028	1,900
2029	1,900
Total	7,600

There is a wide range of possible costs due to this effect of this final rule. Most notably, and described previously in this section, is that the impact of reducing out-of-pocket costs could have different impacts than estimated here. Thus, individuals could use greater or lesser levels of additional services, resulting in different levels of Medicare spending changes than estimated here. This uncertainty is addressed in the high and low range estimates provided in the accounting statement (see section IV.F. of this final rule).

6. Summary of Administrative Impacts

Table 12 summarizes this rule’s requirements and associated burden estimates.

TABLE 12—SUMMARY OF ADMINISTRATIVE ESTIMATES

Regulation section(s)	Number of respondents	Total number of responses	Time per response (hours)	Total time (hours)	Hourly labor cost (\$/hr)	Total labor cost (\$)	Total state share (\$)	Total beneficiary cost (\$)	Total non-labor cost (\$)	Frequency
§ 435.601	35 States	35	200	7,000	Varies	704,960	352,345	n/a	n/a	One-Time.
§ 435.909	499,185 individuals	499,185	(2)	(998,370)	21.98	n/a	n/a	(21,944,173)	n/a	Annual.
§ 435.909	51 States	51	180	9,180	98.84	907,351	453,676	n/a	n/a	One-Time.
§ 435.909	51 States	250,000	(1)	(250,000)	48.10	(12,025,000)	(6,012,500)	n/a	n/a	Annual.
§ 435.911	51 States	400,000	0.25	100,000	48.10	4,810,000	2,405,000	n/a	n/a	Annual.
§ 435.911	51 States	60,000	1	60,000	48.10	2,886,000	1,443,000	n/a	n/a	Annual.
§ 435.911	60,000 individuals	60,000	4	240,000	21.98	5,275,200	0	5,275,200	n/a	Annual.
§§ 435.911, and 435.952	360,000 individuals	360,000	(3.75)	(1,350,000)	21.98	n/a	n/a	(29,673,000)	n/a	Annual.
§§ 435.911, and 435.952	360,000 individuals	360,000	0	n/a	n/a	n/a	n/a	(369,264,000)	(3,600,000)	Annual.
§ 435.952	51 States	8,400,000	(2)	(16,800,000)	21.98	n/a	n/a	n/a	n/a	Annual.
§ 435.952	8,400,000	8,400,000	0	n/a	n/a	n/a	n/a	n/a	— (84,000,000)	Annual.
§ 435.911, and 435.952	51 States	7,059	(0.42)	(151,200)	48.10	(7,272,720)	(3,636,360)	n/a	n/a	Annual.
§ 435.952	51 States	8,400,000	(0.25)	(2,100,000)	48.10	(101,010,000)	(50,505,000)	n/a	n/a	Annual.
§ 435.952	10 States	4,400	1	44,000	48.10	2,116,400	1,058,200	n/a	n/a	Annual.
§ 435.952	10 States	4,400	(0.75)	(33,000)	48.10	(1,587,300)	(793,550)	n/a	n/a	Annual.
§ 435.952	10 States	6,600	(0.167)	(11,022)	48.10	(530,158)	(265,079)	n/a	n/a	Annual.
Subtotal	9,679,165	27,211,730	Varies	(21,233,412)	Varies	(105,725,267)	(55,500,268)	(415,605,973)	— (87,600,000)	Varies.
§ 435.601	35 States	1	3	105	Varies	9,741	4,871	n/a	n/a	One-Time.
Subtotal	35 States	1	3	105	Varies	9,741	4,871	n/a	n/a	One-Time.
		Total—annual		(21,249,592)	.....	(107,337,578)	(56,306,289)	(415,605,973)	(87,600,000)	
		Total—one-time.		16,285	.....	1,622,052	810,892	n/a	n/a	

7. Summary of Medicaid Spending and Enrollment

In total, these provisions are projected to increase Medicaid spending by

\$18.56 billion and Federal Medicaid spending by \$10.67 billion from 2025 through 2029. Medicaid enrollment is projected to increase by 0.70 million by

2029, with an additional 0.16 million individuals who are currently dually eligible gaining coverage as QMBs.

TABLE 13—IMPACT OF ALL PROVISIONS ON MEDICAID EXPENDITURES AND ENROLLMENT

[Expenditures in millions of dollars, enrollment in millions of person-year equivalents]

	2025	2026	2027	2028	2029	2025–2029
Additional Medicaid Enrollees	0.26	0.53	0.68	0.69	0.70	.....
Additional QMBs	0.15	0.16	0.16	0.16	0.16	.....
Total Spending	2,510	3,560	4,110	4,160	4,220	18,560
Federal Spending	1,440	2,050	2,360	2,390	2,430	10,670

We received comments on our estimated impacts on Federal and State spending for this final rule, and our responses follow.

Comment: Some commenters expressed concern with the projected increase in State spending estimated in the regulatory impact analysis. These commenters noted that the magnitude of additional State spending projected over the next five years would impose significant burden on State budgets including State reserve funds. Conversely, a few commenters that opposed provisions in the proposed rule cited the modest fiscal impact projected in the regulatory impact analysis as evidence of limited benefit and the rationale for their opposition.

Response: We appreciate the commenters' perspectives and acknowledge that this final rule may require programmatic updates and systems changes, and lead to increases in Medicaid and MSP enrollment, that could raise costs for States. To mitigate these concerns, and to allow more time to provide technical assistance to States, we are extending through this final rule the timeline for States to comply with many provisions.

Comment: One commenter expressed concern that we did not appropriately factor social benefits and other distributional impacts attributable to increased enrollment in the Medicaid and MSPs into the regulatory impact analysis. This commenter noted that factoring social benefits, including reduced income- and race-based health disparities, in the regulatory impact analysis would strengthen the economic justification for the provisions in this rule. This commenter also highlighted that the provisions to streamline enrollment in Medicaid and the MSPs would result in a transfer of \$61.9 billion over 5 years to Medicaid and CHIP beneficiaries through additional healthcare spending by those programs.

Response: We note that in section IV.F of this final rule we classify the

impacts of this final rule as transfers, with the Federal Government and States incurring additional costs and beneficiaries receiving medical benefits and reductions in out-of-pocket health care costs (although the dollar value differs from the comment because we have updated our estimates and are only finalizing certain provisions of the proposed rulemaking in this final rule). Further, we acknowledge the potential benefit of factoring in social benefits into the regulatory impact analysis, but note that our current analysis does not include any potential economic effects associated with the impact of our provisions on social determinants of health. Lastly, we do believe the regulatory impact analysis accounts for distributional impacts in its discussion of transfers and total impacts.

D. Alternatives Considered

In developing this final rule, we considered the following alternatives:

1. Not Finalizing the Rule

We considered not finalizing this rule and maintaining the status quo. However, we believe this final rule will lead to more eligible individuals gaining access to coverage and maintaining their coverage across all States.

2. Providing States With Discretion Regarding the Date of Application for QMBs

Section 406.26 describes enrollment in Medicare Part A through the buy-in process. We considered proposing modifications to § 406.26(b) to provide States with discretion to use the Part A conditional enrollment filing date as the date of the Medicaid application for QMB eligibility. As background, the QMB eligibility group covers Part A premiums for individuals who do not qualify for premium-free Part A. However, to apply for the QMB eligibility group, an individual must be entitled to Part A and many cannot afford the monthly premium (\$499 in 2022). Such individuals have to

navigate a complex two-step process where they first apply for conditional enrollment in Part A at SSA, then go to the State Medicaid agency to apply for the QMB eligibility group. Providing States the option to use the date of application at SSA for conditional enrollment as the date of application for a QMB application could permit States to offer an earlier effective date for QMB. We chose not to propose a regulatory change because we did not have enough information to accurately assess its impact. However, we sought comments on this alternative considered that might be adopted in this final rule based on comments received. In this final rule, we are not finalizing any such alternatives and instead, are finalizing what we proposed (albeit with a compliance date in 2026) for the reasons we cited in section II.A.1. of this final rule.

E. Limitations of the Analysis

There are a number of caveats to these estimates. Foremost, there is significant uncertainty about the actual effects of these provisions. Each of these provisions could be more or less effective than we have assumed in developing these estimates, and for many of these provisions we have made assumptions about the impacts they would have. In many cases, determining the reasons why a person may not be enrolled despite being eligible for Medicaid is difficult to do in an analysis such as this. Therefore, these assumptions rely heavily on our judgment about the impacts of these provisions. While we believe these are reasonable estimates, we note that this could have a substantially greater or lesser impact than we have projected.

Second, there is uncertainty even under current policy in Medicaid. Due to the COVID-19 pandemic and legislation to address the pandemic, Medicaid has experienced significant increases in enrollment since the beginning of 2020. Actual underlying

economic and public health conditions may differ than what we assume here.

In addition to the sources of uncertainty described previously, there are other reasons the actual impacts of these provisions may differ from the estimates. There may be differences in the impacts of these provisions across eligibility groups or States that are not reflected in these estimates. There may also be different costs per enrollee than we have assumed here because those gaining coverage altogether or keeping coverage for longer durations of time may have different costs than those who were already assumed to be enrolled in the program. Lastly, to the extent that States have discretion in provisions that are optional in this final rule or in the administration of their programs more broadly, States' efforts to implement these provisions may lead to larger or smaller impacts than estimated here.

To address these limitations, we have developed a range of impacts for Medicaid spending. We believe that the actual impacts would likely fall within a range 50 percent higher or lower than

the estimates we have developed. While this is a significant range, we would note that in the context of the entire Medicaid program (\$743 billion in FY 2021), this is still a relatively narrow range.

F. Accounting Statement

As required by OMB Circular A-4 (available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), we have prepared an accounting statement in Table 14 showing the classification of the transfer payments with the provisions of this final rule. These impacts are classified as transfers, with the Federal Government and States incurring additional costs and beneficiaries receiving medical benefits and reductions in out-of-pocket health care costs.

This provides our best estimates of the transfer payments outlined in section IV.C. (Anticipated Effects) of this final rule. To address the significant uncertainty related to these estimates,

we have assumed that the costs could be 50 percent greater than or lesser than we have estimated here. We recognize that this is a relatively wide range, but we note several reasons for uncertainty regarding these estimates. First, there are numerous provisions that affect Medicaid in this rule. For several provisions, we have limited information, analysis, or comparisons to prior experience to use in developing our estimates. Thus, the range reflects that impacts of these provisions could be greater or lesser than we assume. We also note that there are expected impacts on Medicare; we believe this range adequately accounts for the potential variation in costs or savings to that program as well. Finally, given the significant effects of the COVID-19 pandemic and legislation intended to address it, the current outlook for Medicaid is less certain than typical. We provide this wider range to account for this uncertainty as well. This range provides the high cost and low cost ranges shown in Table 14.

TABLE 14—ACCOUNTING STATEMENT
[Expenditures in millions of 2025 dollars]

Category	Primary estimate	Low estimate	High estimate	Units		
				Year dollars	Discount rate (%)	Period covered
Annualized Monetized Transfers from Federal Government to beneficiaries ...	\$3,579	\$1,790	\$5,369	2025	7	2025–2029
	3,622	1,811	5,433	2025	3	2025–2029
Annualized Monetized Transfers from States to beneficiaries	1,555	777	2,332	2025	7	2025–2029
	1,568	784	2,352	2025	3	2025–2029

This final regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on September 15, 2023.

List of Subjects

42 CFR Part 406

Diseases, Health facilities, Medicare.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

- 1. The authority citation for part 406 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395i–2, 1395i–2a, 1395p, 1395q and 1395hh.

- 2. Section 406.21 is amended by adding paragraph (c)(5) to read as follows:

§ 406.21 Individual enrollment.

* * * * *

(c) * * *

(5) If an individual resides in a State that pays premium hospital insurance for Qualified Medicare Beneficiaries under § 406.32(g) and enrolls or reenrolls during a general enrollment period after January 1, 2023, QMB

coverage is effective the month entitlement begins (if the individual is determined eligible for QMB before the month following the month of enrollment), or a month later than the month entitlement begins (if the individual is determined eligible for QMB the month entitlement begins or later).

* * * * *

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

- 3. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 1302.

- 4. Section 435.4 is amended by adding a definition for “Low Income Subsidy Application data (LIS leads data)” in alphabetical order to read as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Low-Income Subsidy Application data (LIS leads data) means data from an individual's application for low-income subsidies under section 1860D–14 of the Act that the Social Security Administration electronically transmits to the appropriate State Medicaid agency as described in section 1144(c)(1) of the Act.

* * * * *

■ 5. Section 435.601 is amended by adding paragraph (e) to read as follows:

§ 435.601 Application of financial eligibility methodologies.

* * * * *

(e) *Procedures for determining eligibility for the Medicare Savings Program groups.* When a State determines eligibility for a Medicare Savings Program group, for income eligibility the agency must include at least the individuals described in § 423.772 of this chapter in determining family of the size involved.

* * * * *

■ 6. Revise § 435.909 to read as follows:

§ 435.909 Automatic entitlement to Medicaid following a determination of eligibility under other programs.

(a) *Automatic enrollment of certain individuals in Medicaid.* The agency must not require a separate application for Medicaid from an individual, if the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act for determining Medicaid eligibility; and—

(1) The individual receives SSI;

(2) The individual receives a mandatory State supplement under either a federally-administered or State-administered program; or

(3) The individual receives an optional State supplement and the agency provides Medicaid to beneficiaries of optional supplements under § 435.230.

(b) *Automatic enrollment of SSI recipients in the Qualified Medicare Beneficiary group.* (1) The agency must deem individuals eligible for the Qualified Medicare Beneficiary group as described in § 400.200 of this chapter if the individual receives SSI and is determined eligible for medical assistance under § 435.120 or § 435.121; and—

(i) The individual is entitled to Part A under part 406, subpart B, of this chapter; or

(ii) The individual is entitled to Part A under § 406.20 of this chapter and the agency has a State buy-in agreement authorized under section 1843 of the

Act and modified under section 1818(g) of the Act.

(2) The agency may deem individuals eligible for the Qualified Medicare Beneficiary group as described in § 400.200 of this chapter if the individual receives SSI and is determined eligible for medical assistance under §§ 435.120 or 435.121; and—

(i) The individual is entitled to Part A under § 406.5(b) of this chapter; and

(ii) The agency uses the group payer arrangement under § 406.32(g) of this chapter to pay Part A premiums for Qualified Medicare Beneficiaries.

(3) The automatic enrollment of SSI recipients in the Qualified Medicare Beneficiaries group described in paragraphs (b)(1) and (2) of this section is effective no earlier than the effective date of coverage under a buy-in agreement for individuals described in § 407.47(b) of this chapter.

■ 7. Section 435.911 is amended by adding paragraph (e) to read as follows:

§ 435.911 Determination of eligibility.

* * * * *

(e) For each individual who has applied for the Part D Low Income Subsidy through the Social Security Administration (SSA) and granted permission for the Social Security Administration to share Low Income Subsidy application data (LIS leads data) with the Medicaid agency for the purpose of submitting an application for the Medicare Savings Programs, the agency must—

(1) Accept, via secure electronic interface, LIS leads data transmitted to the agency from SSA;

(2) Treat received LIS leads data relating to an individual as an application for eligibility under the Medicare Savings Programs, without requiring submission of another application;

(3) Accept LIS leads data, without further verification, unless—

(i) The agency has information that is not reasonably compatible with the leads data; or

(ii) The information provided through the LIS leads data does not support a determination of eligibility for the Medicare Savings Programs;

(4) Not request information or documentation from the individual already provided to SSA through the LIS application and included in the transmission to the agency by SSA unless the agency has information that is not reasonably compatible with the LIS leads data;

(5) Seek additional information that is not in the LIS leads data if needed by the agency to make a determination of

eligibility for the Medicare Savings Programs;

(6) Verify an individual's U.S. citizenship or satisfactory immigration status in accordance with §§ 435.406 and 435.956;

(7) Determine the eligibility of the individual for the Medicare Savings Programs promptly and without undue delay, consistent with timeliness standards established under § 435.912; and

(8) If any of the LIS leads data does not support a determination of eligibility under the Medicare Savings Programs—

(i) Determine what additional information is needed to make a determination of eligibility for the Medicare Savings Programs;

(ii) Notify the individual that they may be eligible for assistance with their Medicare premium and/or cost sharing charges, but that additional information is needed for the agency to make a determination of such eligibility;

(iii) Provide the individual with a minimum of 30 days to furnish any information needed by the agency to make such determination of eligibility; and

(iv) Verify the individual's eligibility for the Medicare Savings Programs in accordance with the agency's verification plan developed in accordance with § 435.945(j).

(9) Provide the individual with, in addition to and separate from any requests for additional information necessary for a determination of Medicare Savings Program eligibility, unless CMS approves otherwise,—

(i) Information about the availability of additional Medicaid benefits on other bases, including the scope of such benefits and responsibilities of the individual applying for such benefits; and

(ii) An opportunity to furnish such additional information as may be needed to determine whether the individual is eligible for such additional Medicaid benefits on other bases.

■ 8. Section 435.952 is amended by adding paragraph (e) to read as follows:

§ 435.952 Use of information and requests for additional information from individuals

* * * * *

(e) When determining eligibility for individuals applying for the Medicare Savings Programs specified in sections 1902(a)(10)(E)(i), (iii) and (iv) and 1905(p) of the Act, the agency must accept attestation (either self-attestation by the individual or attestation by an adult who is in the applicant's household, as defined in § 435.603(f), or family, as defined in section 36B(d)(1)

of the Internal Revenue Code, an authorized representative, or, if the individual is a minor or incapacitated, someone acting responsibly for the individual) of the following income and asset information without requiring further information (including documentation) from the individual:

(1) *Income and interest income.* (i) Except as provided in paragraph (e)(1)(ii) of this section, the agency must accept an applicant's attestation of the value of any dividend and interest income earned on resources owned by the applicant or the applicant's spouse.

(ii) If the agency has information that is not reasonably compatible with an applicant's attestation, the agency must seek additional information from the individual in accordance with paragraph (c) of this section.

(iii) The agency may verify interest and dividend income after the agency has determined that an applicant is eligible for the Medicare Savings Programs, in accordance with paragraph (c) of this section. If the agency requests documentation in accordance with this paragraph, the agency must provide the individual with at least 90 days from the date of the request to provide any necessary information requested and must allow the individual to submit such documentation through any of the modalities described in § 435.907(a).

(2) *Non-liquid resources.* (i) Except as provided in paragraph (e)(2)(ii) of this section, the agency must accept an applicant's attestation of the value of any non-liquid resources owned.

(ii) If the agency has information that is not reasonably compatible with an applicant's attestation, the agency must seek additional information from the individual in accordance with paragraph (c) of this section.

(iii) The agency may verify the value of non-liquid resources after the agency has determined that an applicant is eligible for the Medicare Savings Programs, in accordance with paragraph (c) of this section. If the agency requests documentation in accordance with this

paragraph, the agency must provide the individual with at least 90 days from the date of the request to provide any necessary information requested and must allow the individual to submit such documentation through any of the modalities described in § 435.907(a).

(3) *Burial funds.* (i) Except as provided in paragraph (e)(3)(ii) of this section, the agency must accept an applicant's attestation that up to \$1,500 of their resources, and up to \$1,500 of their spouse's resources, are set aside in a separate account and are not countable as resources when determining eligibility for the Medicare Savings Programs.

(ii) If the agency has information that is not reasonably compatible with an applicant's attestation, the agency must seek additional information from the individual in accordance with paragraph (c) of this section.

(iii) The agency may verify resources in burial funds after the agency has determined that an applicant is eligible for the Medicare Savings Programs, in accordance with paragraph (c) of this section. If the agency requests documentation in accordance with this paragraph, the agency must provide the individual with at least 90 days from the date of the request to provide any necessary information requested and must allow the individual to submit such documentation through any of the modalities described in § 435.907(a).

(4) *Life insurance policies.* (i) Except as provided in paragraph (e)(4)(ii) of this section, the agency must accept an applicant's attestation of the face value of life insurance.

(A) If an individual attests to a face value of life insurance policy that is above \$1,500, the State may accept an attestation of the cash surrender value of the life insurance policy for the purpose of determining resource eligibility for the Medicare Savings Programs.

(B) [Reserved]

(ii) If the agency has information about either the face value or the cash surrender value that is not reasonably

compatible with an applicant's attestation, the agency must seek additional information from the individual in accordance with paragraph (c) of this section, which may include a reasonable explanation of the discrepancy or documentation.

(iii) The agency may verify the face value of a life insurance policy after the agency has determined that an applicant is eligible for a Medicare Savings Program, in accordance with paragraph (c) of this section.

(iv)(A) When an individual must provide documentation of the cash surrender value of a life insurance policy, the agency must assist the individual with obtaining this information and documentation by requesting that the individual provide the name of the insurance company and policy number and authorize the agency to obtain such documentation from the issuer of the policy on the individual's behalf. The agency may also request, but may not require, additional information from the applicant to assist the agency in obtaining the needed documentation, such as the name of an agent.

(B) If the individual does not provide the information and authorization in paragraph (e)(4)(iv)(A) of this section, the agency may require that the individual provide documentation of the cash surrender value.

(C) The agency must allow the individual to submit documentation through any of the modalities described in § 435.907(a) and provide the individual with at least 15 days to provide information or documentation described in this paragraph if such information or documentation is requested pursuant to paragraph (e)(4)(i) or (ii) of this section and at least 90 days if required pursuant to paragraph (e)(4)(iii) of this section.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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Part III

Consumer Product Safety Commission

16 CFR Parts 1112 and 1263

Safety Standard for Button Cell or Coin Batteries and Consumer Products
Containing Such Batteries; Final Rules

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Parts 1112 and 1263**

[CPSC Docket No. 2023–0004]

Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries**AGENCY:** Consumer Product Safety Commission.**ACTION:** Direct final rule.

SUMMARY: In February 2023, as required by Reese's Law, the U.S. Consumer Product Safety Commission (CPSC or Commission) issued a notice of proposed rulemaking (NPR) to eliminate or adequately reduce the risk of injury from ingestion of button cell or coin batteries by children six years old and younger. In the NPR the Commission preliminarily determined that no existing voluntary standard met the requirements in Reese's Law at that time. In this document, however, the Commission determines that one voluntary standard, substantially revised since publication of the NPR, now meets the requirements in Reese's Law with respect to performance and labeling requirements for consumer products containing button cell or coin batteries. Reese's Law states that after a determination of sufficiency by the Commission, such a qualifying voluntary standard is treated as a consumer product safety rule. The Commission is publishing this determination, as required by Reese's Law, as well as a direct final rule to incorporate the voluntary standard by reference into our regulations. Consumer products subject to performance and labeling requirements in this direct final rule must be tested and certified as compliant with the direct final rule.

DATES:

Effective date: The direct final rule is effective October 23, 2023, unless the Commission receives a significant adverse comment by October 5, 2023. If the Commission receives such a comment, we will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

Compliance and enforcement dates: Third party testing and certification of children's products subject to this rule is not required until on or after December 20, 2023. Consumer products containing button cell or coin batteries that are manufactured or imported after October 23, 2023, must comply with this direct final rule. However, in recognition of limited testing

availability and for the avoidance of hardship, the Commission is granting a 180-day transitional period of enforcement discretion from September 21, 2023, through March 19, 2024.

Incorporation by reference: The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of October 23, 2023.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2023–0004, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC–2023–0004, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT:

William Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814;

telephone 301–504–7945; email: SBO@CPSC.gov.

SUPPLEMENTARY INFORMATION: On February 9, 2023, pursuant to section 2 of Reese's Law (Pub. L. 117–171, 15 U.S.C. 2056e), the Commission published an NPR to establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.¹ 88 FR 8692. As required by section 2(a) of Reese's Law, the NPR contained performance and labeling requirements for consumer products containing button cell or coin batteries² and labeling requirements for button cell and coin battery packaging. See 15 U.S.C. 2056e(a). The NPR also proposed to require notification of additional point-of-sale performance and technical data related to the safety of button cell or coin batteries using the Commission's authority under section 27(e) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2076(e). 88 FR 8709. Based on staff's assessment of existing voluntary standards, the Commission preliminarily determined in the NPR that no voluntary standard in existence at that time met the performance or labeling requirements of section 2 of Reese's Law, and requested comment on that preliminary finding. 88 FR 8702, 8705. The Commission received 38 comments during a 30-day comment period ending in March 2023; four of the comments were duplicates. CPSC received two late-filed comments; one is out-of-scope for this rulemaking. We also received nine comments in response to an April 11, 2023 Paperwork Reduction Act (PRA) notice. 88 FR 21652. Tab A of Staff's Final Rule Briefing Package³ and section III of this

¹ To implement Reese's Law, on September 8, 2023, the Commission voted (4–0) to publish this determination and a direct final rule to incorporate by reference, UL 4200A–2023, approved August 30, 2023, as the mandatory standard for consumer products containing button cell or coin batteries, with changes. The Chair, and Commissioners Trumpka and Feldman, issued statements in connection with their vote. Statements and an explanation of the Commission's changes are available at: https://www.cpsc.gov/s3fs-public/RCA-Reese-s-Law-Implementation-UL-4200A-2023-DFR-for-Button-Cell-or-Coin-Batteries-and-Draft-FR-to-Amend-Part-1263.pdf?VersionId=V56MNzyWa_iXqZQIKCyOIRtjl9lcoFit.

² Reese's Law defines the phrase “consumer product containing button cell or coin batteries” as “a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.” Notes to 15 U.S.C. 2056e.

³ The information in this Commission determination and direct final rule is based on information and analysis provided in the August 31, 2023, Staff Briefing Package: Draft Final Rule to Establish a Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such

preamble summarize and respond to the comments CPSC received.

After consideration of the comments and the relevant existing voluntary standards, the Commission determines that a recent revision of ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries*, published on August 30, 2023 (UL 4200A–2023), does meet the performance and labeling requirements in section 2(a) of Reese’s Law with respect to consumer products containing button cell or coin batteries. 15 U.S.C. 2056e(a) and (d). Accordingly, under section 2(e) of Reese’s Law, UL 4200A–2023 is treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) as of the date of the Commission’s determination.⁴ 15 U.S.C. 2056e(e). The Commission is publishing this determination in the **Federal Register**, as required by Reese’s Law. 15 U.S.C. 2056e(d)(2).

This notification of the Commission’s determination includes a direct final rule (DFR) to incorporate by reference UL 4200A–2023 into the Code of Federal Regulations as the mandatory consumer product safety rule for consumer products containing button cell or coin batteries. Consistent with the Administrative Procedure Act (APA), 5 U.S.C. 553, the DFR has an effective date of 30 days after publication. Further, in recognition of limited testing availability the Commission is granting a 180-day

transitional period of enforcement discretion, to begin September 21, 2023.

The Commission is issuing a separate final rule, published elsewhere in this issue of the **Federal Register**, to establish labeling requirements for button cell or coin battery packaging as required by Reese’s Law, because such products are not within the scope of UL 4200A–2023. 15 U.S.C. 2056e(d)(1). Currently the Commission is not finalizing the proposed requirements in the NPR for consumer notification of performance and technical data under section 27(e) of the CPSA; although, the UL 4200A–2023 revision includes some of the notification requirements proposed in the NPR. The name of the rule to be codified in 16 CFR part 1263 reflects this change by removing the phrase “and Notification Requirements”; the rule is now entitled “Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.”

I. Statutory and Regulatory Background

A. Reese’s Law

President Biden signed Reese’s Law on August 16, 2022. 15 U.S.C. 2056e. The purpose of Reese’s Law is to protect children six years old and younger against hazards associated with the ingestion of button cell or coin batteries. Section 5 of Reese’s Law broadly defines a “button cell or coin battery” as “(A) a single cell battery with a diameter greater than the height of the battery; or (B) any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.”⁵ Thus, the definition of a consumer product with an in-scope battery depends on the shape of the battery (which contributes to the ingestion-related risk) and, as stated in part (B), whether the battery otherwise is associated with an ingestion hazard, which is consistent with the stated purpose in section 2(a)(1) of Reese’s Law.⁶ 15 U.S.C. 2056e(a)(1).

Section 2(a)(1) of Reese’s Law mandates that a rule must include performance requirements for button cell or coin battery compartments on

consumer products to secure them in a manner that eliminates or adequately reduces the risk of injury from the ingestion of button cell or coin batteries by children who are six years old or younger, during reasonably foreseeable use or misuse of the product. 15 U.S.C. 2056e(a)(1).

Section 2(a)(2) of Reese’s Law mandates warning label requirements in a rule. Warnings are required:

- On the packaging of button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));
- On the packaging of consumer products containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));
- In any literature, such as a user manual, that accompanies a consumer product containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(B));
- As practicable, directly on a consumer product that contains button cell or coin batteries in a manner visible to the consumer upon installation or replacement of the button cell or coin battery (15 U.S.C. 2056e(a)(2)(C)(i));
- As practicable, in the case of a product for which the battery is not intended to be replaced or installed by the consumer, directly on the consumer product in a manner that is visible to the consumer upon access to the battery compartment, except that if it is impracticable to label the product, this information shall be placed on the packaging or instructions (15 U.S.C. 2056e(a)(2)(C)(ii)).

Warning labels required by section 2(b) of Reese’s Law must (1) clearly identify the hazard of ingestion and (2) instruct consumers, as practicable, to keep new and used batteries out of the reach of children, to seek immediate medical attention if a battery is ingested, and to follow any other consensus medical advice. 15 U.S.C. 2056e(b).

To address ingestion of button cell or coin batteries, section 2(a) of Reese’s Law requires the Commission to publish a final consumer product safety standard for button cell or coin batteries, and consumer products containing button cell or coin batteries, not later than 1 year after the date of enactment. 15 U.S.C. 2056e(a). However, if the Commission determines before promulgating a rule that an existing voluntary standard meets the performance and labeling requirements in section 2(a) of Reese’s Law, then under section 2(d)(1) of Reese’s Law the requirement for the Commission to promulgate a rule does not apply. 15 U.S.C. 2056e(d)(1). Instead, the Commission must publish such determination of a voluntary standard’s sufficiency in the **Federal Register**. 15 U.S.C. 2056e(d)(2). As set forth in section IV of this preamble, the

Batteries (Staff’s Final Rule Briefing Package), available at: <https://www.cpsc.gov/s3fs-public/Reeses-Law-Implementation-Commission-Determination-Regarding-UL-4200A-2023-and-Draft-DFR-for-Button-Cell-or-Coin-Batteries-and-2-Draft-FR-to-Amend-Part-1263--Labeling-Requirements-for-Button-Cell-or-Coin-Batte.pdf?VersionId=PyTbnom1OemA3BW19Z1IONzTlyqbcthW>, and on the January 11, 2023, Staff Briefing Package: Draft Proposed Rule to Establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Staff’s NPR Briefing Package), available at: <https://www.cpsc.gov/s3fs-public/NoticeofProposedRulemakingSafetyStandardandNotificationRequirementsforButtonCellorCoinBatteriesandConsumerProductsContainingSuchBatteries.pdf?VersionId=kDinNeydktkt3T8RRtzN4u1GTXPrijpEL>.

⁴ Reese’s Law states that if the Commission makes a determination with respect to a voluntary standard, the requirements of such voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) beginning on the later of either (A) the date of the Commission’s determination with respect to the voluntary standard described; or (B) the effective date contained in the voluntary standard. UL 4200A–2023 does not contain an “effective date,” and the Commission is making this determination after publication of the UL 4200A–2023 standard. Accordingly, the later of the two dates in section (e)(2) of Reese’s Law (15 U.S.C. 2056e(e)(2)) is the date of the Commission’s determination.

⁵ The definitions in section 5 of Reese’s Law are codified in the Notes to 15 U.S.C. 2056e.

⁶ This direct final rule focuses on addressing button cell and coin batteries under part (A) of the definition because other batteries where the diameter is less than the height, such as AAA cylindrical batteries, do not pose the same type or degree of ingestion hazard as button cell or coin batteries. If CPSC becomes aware of a serious ingestion hazard associated with another battery type that is not adequately addressed by voluntary standards, section 2(g) of Reese’s Law allows the Commission to undertake additional rulemaking to address the hazard. 15 U.S.C. 2056e(g).

Commission determines that UL 4200A–2023 meets the performance and labeling requirements in section 2(a) of Reese’s Law with respect to consumer products containing button cell or coin batteries.

Section 2(e) of Reese’s Law states that the requirements of a voluntary standard the Commission determines to meet section 2(a) of Reese’s Law shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) beginning on the date that is the later of either the date the Commission makes the determination under section 2(d), or the effective date in the voluntary standard. 15 U.S.C. 2056e(e)(2). The UL standard does not include an “effective date.” Rather, UL standards are published when approved through a consensus process by a majority vote that meets UL’s procedural requirements.⁷ Publication of UL 4200A–2023 occurred before publication of the Commission’s determination, and therefore the date of this publication is the relevant effective date for purposes of section 2(e)(2) of Reese’s Law.

The Commission makes the determination that UL 4200A–2023 meets the requirements of section 2(a) of Reese’s Law with respect to

performance and labeling requirements for consumer products that contain button cell or coin batteries; therefore, by operation of law, UL 4200A–2023 is a consumer product safety rule as of the date of this determination. 15 U.S.C. 2056e(e)(2).⁸ The Commission additionally is codifying UL 4200A–2023 into a regulation, and the effective date of the DFR is 30 days from publication, as described in section VII of this preamble. As noted, the Commission is granting a 180-day transitional period of enforcement discretion.

Section 2(f)(1) of Reese’s Law establishes a process for subsequent revision of a voluntary standard the Commission has adopted as a mandatory standard under section 2(d). In addition, section 2(g) of Reese’s Law provides that any time after a voluntary standard is treated as a consumer product safety rule under section 2(e), or a revised voluntary standard becomes enforceable as a consumer product safety rule under section 2(f), the Commission may initiate a rulemaking in accordance with 5 U.S.C 553 to modify the requirements of the standard or revised standard. 15 U.S.C. 2056e(g).

Section 4 of Reese’s Law specifically exempts from the performance and

labeling requirements in section 2 of the law, any toy product⁹ that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys. Notes to 15 U.S.C. 2056e. However, children’s products that contain button cell or coin batteries and that are not a “toy product,” are required to meet the performance and labeling requirements in this final rule. An example of such products would be children’s apparel, such as shoes, that light up and use a button cell or coin battery as a power source.¹⁰

B. Description of the NPR

The NPR proposed a rule to address the battery ingestion hazard for children six years of age or younger. The NPR explained that children access button batteries from consumer products that are powered by the batteries, either directly from the battery compartment or because the batteries have escaped from the compartment. 88 FR 8698–99. CPSC has not identified any additional hazard patterns since the NPR. Figure 1 provides examples of button cell and coin batteries, and Figure 2 shows a few examples of consumer products that contain button cell or coin batteries.

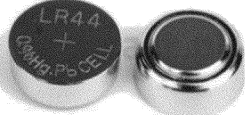
		
LR44 button cell, 11.6mm (0.45 inch) diameter x 5.4mm (0.21 inch) thick	LR754 button cell, 7.9 mm (0.31 inch) diameter, 5.4mm (0.21 inch) thick	LR626 button cell, 6.8 mm (0.26 inch) diameter, 2.6mm (0.10 inch) thick
		
CR2032, 20mm (0.787 inch) diameter	CR2025, 20mm (0.787 inch) diameter	CR2450, 24mm (0.945 inch) diameter

Figure 1. Example button cell and coin batteries.

⁷ See ULSE ANSI Accredited Procedures, Approved December 2, 2022, available at: https://ulstandards.ul.com/wp-content/uploads/2023/03/ULSEANSIAccreditedProcedures_20221202.pdf.
⁸ UL 4200A–2023 does not, however, address labeling of battery packaging. Accordingly, in a separate document published elsewhere in this issue of the **Federal Register**, the Commission is

finalizing a rule to require labeling on button cell or coin battery packaging. Notes to 15 U.S.C. 2056e.
⁹ Consistent with 16 CFR part 1250, a “toy product” is defined as “any object designed, manufactured, or marketed as a plaything for children under 14 years of age.” Notes to 15 U.S.C. 2056e.

¹⁰ Section 3 of Reese’s Law requires special packaging for button cell or coin batteries. These requirements, codified in the Notes to 15 U.S.C. 2056e, are self-implementing, and do not require CPSC to issue a rule. Section 3 of Reese’s Law was effective by operation of the statute on February 12, 2023.



Figure 2. Example products that use button cell or coin batteries.

In accordance with section 2 of Reese's Law, the NPR contained performance and labeling requirements for consumer products that contain button cell or coin batteries.

Performance requirements: As required by Reese's Law, the NPR proposed that consumer products containing button cell or coin batteries require the battery to be secured in a manner that would eliminate or adequately reduce the risk of injury from the ingestion hazard to children during reasonably foreseeable use or misuse conditions. In developing the NPR, the Commission drew upon requirements stated in:

- UL 4200A–2020, *Standard for Safety for Products Incorporating Button or Coin Cell Batteries of Lithium Technologies* (UL 4200A–2020);
- ASTM F963–17 *Standard Consumer Safety Specification for Toy Safety* (ASTM F963);
- Voluntary standards referenced by Australian F2020L01656, including:
 - IEC 62368–1:2018 *Audio/video, information and communication technology equipment-Part 1: Safety requirements* (IEC 62368–1);
 - IEC 62115:2017 *International Standard for Electric Toys—Safety* (IEC 62115);
 - AS/NZS 60065:2018 *Audio, video and similar electronic apparatus—Safety requirements* (AS/NZS 60065:2018); and
 - AS/NZS 60598.1:2017 *Luminaires Part 1: General requirements and tests* (AS/NZS 60598.1:2017).

Table 7 of the NPR summarized the Commission's analysis of the performance requirements in these voluntary standards. 88 FR 8701. Based on the analysis in Tab D of Staff's NPR Briefing Package, the Commission preliminarily concluded that none of these voluntary standards alone contained performance requirements that are adequate to address the

requirements in Reese's Law. 88 FR 8701–02. Therefore, to address the performance requirements mandated in Reese's Law, the proposed performance requirements in CPSC's NPR differed from the requirements in the voluntary standards in several ways, including:

- Broader scope to match the scope of products covered by Reese's Law;
- Clarification that a locking mechanism requiring two simultaneous and independent actions does not include actions that can be combined into one single action by a single finger or digit, to address poor locking mechanism designs observed in testing;
- Addition of the compression test from the ASTM F963–17 toy standard, codified in 16 CFR part 1250, to address children pressing on areas of the battery compartment not directly impacted by the drop test;
- Requirement that all products, including products weighing more than 18 kg, be subjected to 10 drops;
- Addition of the torque and tensile tests from the toy standard to address a child grabbing and twisting or pulling on parts of the battery enclosure or tearing apart soft goods with fingers or teeth.

88 FR 8702–04. Tables 8 and 9 in the NPR, 88 FR 8702, summarized CPSC's proposed performance requirements for consumer products with replaceable and non-replaceable button cell or coin batteries.

Warning label requirements: For consumer products containing button cell or coin batteries, Reese's Law requires warnings on:

- The packaging of consumer products;
- Accompanying literature; and
- Consumer products, as practicable.

15 U.S.C. 2056e(a)(2). Reese's Law also requires warnings on packaging of button cell or coin batteries. *Id.* Warning statements must clearly identify the hazard of ingestion and instruct

consumers, as practicable, to keep new and used batteries out of the reach of children, seek immediate medical attention if a battery is ingested, and follow any other consensus medical advice. 15 U.S.C. 2056e(b).

The NPR assessed warning requirements in several voluntary standards, and preliminarily concluded that none of the voluntary standards were adequate to meet the requirements in Reese's Law. Tab C of Staff's NPR Briefing Package; 88 FR 8704–05. Tables 10 and 11 in the NPR summarized the Commission's assessment of the warning label requirements in voluntary standards, in relation to the requirements of Reese's Law. 88 FR 8705.

Because none of the voluntary standards met the requirements in Reese's Law at the time of the NPR, the Commission proposed warning requirements for the packaging of consumer products containing button cell or coin batteries, accompanying literature, and, as practicable, consumer products. 88 FR 8706–09. The NPR also proposed warnings requirements for the packaging of button cell or coin batteries, which are being established by the Commission in a separate final rule. 88 FR 8706–07.¹¹

II. Assessment of Performance and Labeling Requirements in UL 4200A–2023

Several pertinent voluntary standards have been revised since the NPR published on February 9, 2023. IEC 62368–1 published a new edition

¹¹ The NPR additionally proposed to require point-of-sale warnings of the ingestion hazard and other battery safety information under section 27(e) of the CPSA to improve safety communication to consumers to address the unreasonable risk of injury and death to children from ingesting or inserting button cell or coin batteries into the body, and other hazards. 88 FR 8709–11. The Commission is not finalizing proposed requirements under section 27(e) of the CPSA at this time.

(Edition 4, or IEC 62368–1:2023) in May 2023. In January 2023, ASTM balloted a revision to the battery compartment construction requirements in ASTM F963. In April 2023, UL balloted a revised version of UL 4200A, which was further revised and reballoted in July 2023, and comment responses were recirculated in August 2023. UL published its most recent revisions on August 30, 2023, as UL 4200A–2023.

Tab E of Staff's Final Rule Briefing Package contains staff's detailed assessment of ASTM F963, UL 62368–1, and the revised IEC 62368–1:2023. Based on staff's updated assessment of ASTM F963, UL 62368–1, and IEC 62368–1:2023, the Commission cannot determine that any of these standards is adequate to meet the requirements in section 2(a) of Reese's Law. However, for the reasons stated below and further elaborated in Tab E of Staff's

Final Rule Briefing Package, the Commission determines that UL 4200A–2023 meets the performance and labeling requirements in section 2(a) of Reese's Law as applied to consumer products containing button cell or coin batteries. Table 1a summarizes CPSC's evaluation of the performance requirements in the updated voluntary standards.

TABLE 1a—ASSESSMENT OF EXISTING VOLUNTARY STANDARDS' PERFORMANCE REQUIREMENTS FOR BUTTON CELL OR COIN BATTERIES

		UL 4200A–2023	ASTM F963 (Ballot)	UL 62368–1	IEC 62368–1:2023	IEC 62115
Scope	Battery Chemistry Type Product Type	Any * Any	Any Toys	Any Audio/Visual Equipment.	Any Audio/Visual Equipment.	Any. Electronic Toys.
Construction Performance	Opens with Tool Captive screws Threaded attachment requirements.	A A A	A A	A I I	A A A.	A. A. A.
	Opens with two independent and simultaneous movements.	A	O	I	I	O.
Use and Abuse	Accessibility Pre-conditioning in oven Open/close and remove/install battery/screw(s) 10 times.	A A A	A	A A A	A A A	A. A. I.
	Drop test—based on product weight/type.	A	I	I	I	I.
	Drop test—based on age grading.	O	I	O	O	O.
	Impact Test	A .....	.....	A	A	I.
	Crush Test (big surface area).	A .....	.....	A	A.	.....
	Torque Test	A	A.	.....	.....	A.
	Tension Test	A	A .....	.....	.....	A.
	Tension Test—Seams	A	A	I	I.	.....
	Compression Test (little surface area).	A	A	I	I.	.....
	Accessibility Probe Compliance Test.	A	I	I	I	A.
	Securement (non-removable batteries).	A	O	O	O	O.

* Excludes zinc-air batteries, which are not known to be used in consumer products.

Blank—Does not address requirements, I—Inadequately addresses requirements, A—Adequately addresses requirements, O—Otherwise adequately addresses requirements.

Table 1b, below, summarizes CPSC's assessment of warning label requirements for consumer products containing button cell or coin batteries in existing voluntary standards.

TABLE 1b—ASSESSMENT OF EXISTING VOLUNTARY STANDARDS' LABELING REQUIREMENTS FOR CONSUMER PRODUCTS CONTAINING BUTTON CELL OR COIN BATTERIES

		ASTM F963 (Ballot)	UL 4200A–2023	ASTM F2999–19	ASTM F2923–20	IEC 62115	UL 62368–1
Scope	Battery Chemistry Type Product Type	All Toys	All * All	All Jewelry	All Children's Jewelry.	All Toys	All. Audio/Visual Equipment.
Labeling	On Consumer Product Packaging. n instructions or accompanying literature.	I I	A A .....	..... .....	..... .....	I. I	I.

TABLE 1b—ASSESSMENT OF EXISTING VOLUNTARY STANDARDS' LABELING REQUIREMENTS FOR CONSUMER PRODUCTS CONTAINING BUTTON CELL OR COIN BATTERIES—Continued

		ASTM F963 (Ballot)	UL 4200A– 2023	ASTM F2999–19	ASTM F2923–20	IEC 62115	UL 62368–1
	On consumer product ....	.....	A .....	.....	.....	.....	I.

* Excludes zinc-air batteries, which are not known to be used in consumer products.

Blank—Does not address requirements, I—Inadequately addresses requirements, A—Adequately addresses requirements.

Although, as reflected in these tables, UL 4200A–23 satisfies all performance requirements of Reese's law section 2(a), and the law's requirements for labeling of consumer products that contain button cell or coin batteries, this UL standard does not address labeling of battery packaging, for which Reese's Law also has requirements.

Below, we address in detail two significant aspects in which the former UL 4200A–2020 fell short of Reese's Law's requirements, but that the recent revisions to the standard—as we interpret them—do address adequately.

A. Captive Screw Exceptions

Section 5.6 of UL 4200A–2020 included an exception from the requirement for fasteners to remain captive to the battery enclosure for large panel doors on large devices, which are not likely to be discarded or left off the equipment. The Commission did not include such captive screw exception in the NPR and stated that the range of products to which that exception would apply is unclear. 88 FR 8703.

Section 5.6 of UL 4200A–2023 contains a revised requirement for captive screws. Two related exceptions exist for the requirement, both of which apply only to products containing button cell or coin batteries that are not intended to be replaced by the consumer, and where there are instructions and warnings that clearly state the battery is not to be replaced by the consumer. The first exception applies to products containing button cell or coin batteries “that can only be accessed through the removal of multiple enclosures or panels using a tool.” The second captive screw exception applies to “products only to be opened by a professional service center (where children are not present).”

Regarding the first exception, products designed and labeled to not have the battery replaced by the consumer provide the consumer with less incentive or need to access a button cell or coin battery compartment. The requirement to remove multiple enclosures or panels to reach a button cell or coin battery provides an extra layer of protection that prevents

immediate access to batteries, even if screws to those panels are lost or discarded. CPSC is unaware of ingestion incidents involving access to button cell or coin batteries through multiple enclosures on consumer products. Products that might fit into the first exception include desktop and laptop computers, with batteries that frequently last longer than the product itself.

The second exception applies to products “only to be opened by a professional service center (where children are not present).” The text of the UL 4200A–2023 does not further explain this exception. We think it plain, however, that to avoid undermining the safety purpose of the captive screw requirement, the design of the consumer product, as well as its warning language and literature, must be consistent with professional-only access to the battery compartment. Accordingly, we interpret the professional service center exception for captive screws to only apply to consumer products with design and construction characteristics that are inconsistent with consumers accessing the batteries at home, for example by having a battery compartment that cannot be opened with a common household tool such as a straight-blade screwdriver, Phillips screwdriver, pliers, or a coin. For example, watch battery compartments that require a special professional tool to open would not require captive screws. However, watch battery compartments secured only with a straight blade or Phillips screw would not qualify for this captive screw exception, because such a product could be opened by consumers in their homes with readily available household tools.

B. Drop Test Requirements

To address the accidental liberation of button cell or coin batteries from consumer products, UL 4200A–2020 called for “portable” products to be dropped a total of three cycles in testing, and “hand-held” products a total of 10 cycles. In the NPR, the Commission proposed to require all products within the scope of the rule to be subject to 10 drop cycles. 88 FR 8713.

After reviewing the comments received on the NPR (which are discussed in section III below), the Commission agrees that it is appropriate to distinguish between products that are “portable” and those that are “handheld,” provided those definitions are clear and able to be applied consistently. See Tab E of Staff's Final Rule Briefing Package.

Section 4.3A of UL 4200A–2023 now defines “hand-held product” to mean a product that is “reasonably foreseeable to be used or misused when being held in one or both hands.” This category includes only “[p]roducts specifically designed to be carried easily, with a mass not exceeding 4.5 kg (10 lbs).” Section 4.4 of UL 4200A–2023 revises the definition for “portable device” to mean a “device that is reasonably foreseeable to be routinely carried or lifted as part of its use or misuse but not operated during transit with a mass not exceeding 18 kg (39.7 lb).” The Commission concludes that these definitions reasonably distinguish between handheld consumer products that are likely to be handled often and dropped frequently (such as a television remote control, for example), and other products that are moveable but not routinely handheld. The 10-drop requirement applies to the former, while a 3-drop requirement applies to the latter. The Commission determines that this framework in UL 4200A–2023 meets the requirements for Reese's Law section 2(a).

III. Comments on the NPR

CPSC received 38 comments during the comment period (four were duplicates), from February 9 through March 13, 2023, and two late-filed comments (one is out-of-scope for this rulemaking). Also, CPSC received nine comments on a separate PRA notice estimating the burden of the proposed rule. Commenters included medical professionals, standards development associations, consumers, consumer advocates, retail and manufacturing associations, and battery and consumer product manufacturers.

Thirty-three commenters generally supported the safety purpose and scope of Reese's Law. Commenters noted the

potential deadly risk of injury associated with ingestion and insertion of button cell and coin batteries and their ubiquitous use in many different types of consumer products that are accessible to young children. Medical professionals informed the Commission regarding the difficulty in diagnosing an unwitnessed button cell or coin battery ingestion that requires prompt removal of the battery to prevent life-threatening esophageal burns and soft tissue damage, because the symptoms can mimic other health issues such as colds or upset stomach. Commenters generally supported the development of strong performance and labeling requirements for consumer products to prevent the ingestion hazard, as most button cell or coin battery ingestion incidents involve batteries obtained from consumer products.

Many commenters suggested that the CPSC find one of the reviewed voluntary standards adequate to meet Reese's Law requirements and to adopt a voluntary standard for the rule. Because many of the comments received are relevant to the Commission's favorable determination on the UL 4200A–23 voluntary standard, we summarize and respond to them here.

Comments in Response to Questions on Performance Requirements

A. Whether any consumer products (as opposed to medical devices, such as hearing aids) contain zinc-air button cell or coin batteries, and whether such products should be required to meet the performance requirements for battery compartments on consumer products.

Comment 1: Other than use in hearing aids, a medical device, no commenters identify any consumer products using zinc-air button cell or coin batteries. An international battery trade association and a coalition of medical and consumer organizations (American Academy of Pediatrics, Consumer Reports, Public Citizen, Consumer Federation of America, Kids In Danger, and U.S. Public Interest Research Group) state that they are unaware of any consumer products (as defined in section 3 of the CPSA, 15 U.S.C. 2052(a)(5)) using zinc-air batteries. The coalition of medical and consumer organizations state that the Commission should reserve the ability to take further action regarding zinc-air button cell and coin batteries.

Response 1: Because the Commission is not aware of any consumer products that contain zinc-air button cell or coin batteries and commenters did not submit information regarding such products, and because such batteries present a low risk of causing an

ingestion hazard as described in Tab C of Staff's Final Rule Briefing Package, the NPR proposed that zinc-air button cell or coin batteries, and products that use such batteries, should not be subject to the performance requirements in the final rule. Section 1.2 of UL 4200A–2023 contains a similar zinc-air battery exception.

B. Whether any voluntary standard meets the performance and labeling requirements of Reese's Law.

Comment 2: Multiple commenters argue for Commission determinations that various voluntary standards satisfy the requirements of section 2(a) of Reese's Law. Five commenters (The Toy Association, Retail Industry Leaders Association (RILA), Permanent European Horological Committee (CPHE), Federation of the Swiss Watch Industry (FH), and American Watch Association (AWA)) recommend that CPSC accept the voluntary standard ASTM F963 as adequate to address the risk of ingestion by children. The commenters generally state that ASTM F963 adequately fulfills the objectives of Reese's Law, and that no data exists to suggest that the standard creates an accessibility hazard for products containing button cell or coin batteries that comply with the standard. However, a coalition of medical and consumer organizations recommend that the ASTM toy standard subcommittee incorporate some of CPSC's proposed requirements, such as improving testing for fastener retention and threading to avoid stripped screw holes and other possible scenarios that might lend access to the batteries.

Five commenters (Garmin International Inc. (Garmin), CPHE, FH, AWA, and TechNet) recommend that CPSC accept the voluntary standard UL 4200A as adequate to address the risk of child ingestion. Four commenters (Japan Electronics and Information Technology Industries Association (JEITA), Consumer Technology Association (CTA), TechNet, and Information Technology Industry Council (ITI)) further state that CPSC should accept IEC 62368–1 or UL 62368–1 as adequate to address the risk of injury for products within the scope of that standard. The Battery Association of Japan (BAJ), Duracell, Energizer, and the National Electrical Manufacturers Association (NEMA) state that CPSC should accept IEC 60086 or ANSI C18 standards as adequate for battery package labeling requirements. Finally, the Power Tool Institute states that the Commission should work with voluntary standards organizations to improve and codify a voluntary standard.

Response 2: Reese's Law states that the Commission can rely on a voluntary standard, rather than drafting and implementing a rule for covered products, if the Commission determines that: (A) the voluntary standard meets the requirements for a standard promulgated under subsection (a) with respect to the products; and (B) the voluntary standard is in effect at the time of the determination, or will be in effect not later than 180 days after August 16, 2022 (February 12, 2023). 15 U.S.C. 2056e(d)(1). The Commission finds that UL 4200A–2023 meets the requirements of Reese's Law. As set forth in Staff's Final Rule Briefing Package and summarized in Tables 1a and 1b, however, the Commission does not find that any other voluntary standard, as described by the commenters, is adequate to meet the requirements of Reese's Law or to address the risk of injury from child ingestion.

Tabs D and E of Staff's Final Rule Briefing Package discuss staff's updated assessments of the voluntary standards based on feedback received from public comments. None of the commenters provide sufficient analysis, critique, or justification for the Commission to make a determination that any voluntary standard, other than UL 4200A–2023, meets the performance or labeling requirements in Reese's Law.

C. Whether the requirements for accessibility of battery compartments should incorporate test methods commonly used on toy products, such as the torque and tensile tests for parts of the product that can be gripped by a child's fingers or teeth, or a tensile test for pliable materials.

Comment 3: Two commenters (Landsdowne Labs and a coalition of medical and consumer organizations) support the incorporation of test methods commonly used on toy products.

Response 3: Incorporating test methods such as torque and tensile tests for parts of a consumer product that can be gripped by a child's fingers or teeth, or a tensile test for pliable materials, decreases the likelihood of children gaining access to button cell or coin batteries. Based on staff's assessment of these test methods in the ASTM F963 toy standard, the Commission determines that their inclusion in UL 4200A–2023 adequately tests the durability and integrity of battery compartments in products with pliable materials, such as shirts and greeting cards that light up or make sound using batteries. The Commission agrees with the commenters that these requirements will eliminate or adequately reduce the

risk of ingestion in pliable products, as required by Reese's Law.

D. For consumer products that use button cell or coin batteries and have large panel doors, what consumer products have such doors, and should the Commission exclude large panel doors from the requirement for captive screws; why or why not (*i.e.*, why does a large panel door represent a different risk of injury from battery access without using captive screws than a smaller battery compartment door does)?

Comment 4: Three commenters (UL Solutions, CTA, and ITI) state that the large panel door exemption from the captive screw requirement exists for products—like desktop computers which commonly use coin batteries on the motherboards to provide backup power—where the panel forms part of system enclosure which is not intended to be opened regularly by the consumer. The commenters state that consumers are unlikely to leave off or discard screws for these large panel doors. ITI notes that UL 62368–1 states that captive screws are for batteries that need to be replaced regularly.

Response 4: Section 5.6 of UL 4200A–2023 states that products containing button cell or coin batteries with large panel doors are excepted from the captive screw requirement as long as the batteries are not intended to be replaced by the consumer. The intent of the captive screw requirement is to prevent consumers from discarding screws securing battery enclosures after battery replacement during the product's lifetime. For products requiring battery replacement, consumers foreseeably may discard the screws to make replacing the batteries easier, without appreciating the battery ingestion hazard; or consumers may lose the screw and think the product is safe to use without properly securing the battery compartment. However, as explained in section II.A of this preamble, if a product's battery is not meant to be replaced, consumers are unlikely to open large panel doors to access the battery; therefore, requiring captive screws is not reasonably necessary to address the ingestion hazard in Reese's Law.

Exception 1 in section 5.6 of UL 4200A–2023 provides that captive screws are not required for products containing button cell or coin batteries that are not intended to be replaced by the consumer, and that products containing such batteries that can only be accessed through the removal of multiple enclosures or panels using a tool do not need captive screws. UL 4200A–2023 also requires that to meet

the exception, such products must have instructions and warnings that clearly state the battery is not to be replaced by the consumer. Such products must also meet use and abuse testing requirements. The Commission determines that the requirements for multiple enclosures in UL 4200A–2023, which can include large panel doors, are adequate to meet the requirements in section 2(a) of Reese's Law.

E. Whether a double-action locking mechanism used to secure battery compartment enclosures, meaning those mechanisms that rely on two independent and simultaneous hand movements to open (versus a screw, for example), should be allowed to secure button cell or coin battery compartments.

Comment 5: Two commenters (RILA and The Toy Association) provide comments on whether double-action locking mechanisms, which are more accurately described as “multi-action” locking mechanisms to reflect that there can be more than two motions, should be allowed to secure button cell or coin battery compartments. RILA supports including the option for multi-action locking mechanisms, especially for products where it may not be feasible to secure battery compartments with an enclosure that requires a tool. The Toy Association opines that multi-action locking mechanisms are susceptible to be opened by applying forces in a single action or for one or both mechanisms to be disengaged, reducing the safety or efficacy of the mechanism. The Toy Association also comments that multi-action locking mechanisms may present a “false positive” to the consumer, appearing to be closed but susceptible to opening upon product operation.

Response 5: We agree with RILA that multi-action locking mechanisms can be a safe and effective alternative method to securing battery enclosures. Many products that use button cell or coin batteries are small and sometimes may not have enough space in the design to incorporate a screw to secure the battery enclosure. Therefore, providing multi-action locks as an alternative provides industry with some flexibility for designing their products in a safe manner. Staff's review of consumer products demonstrates a variety of different multi-action locking mechanisms that can be effective.

Moreover, both the NPR and UL 4200A–2023 address the Toy Association's concerns. To address incidents involving multi-action locks that could be opened with a single action, and to ensure consistent and reliable testing, the NPR specified that “[t]he movements to open cannot be

combinable to a single movement with a single finger or digit.” 88 FR 8721. Section 5.5(b) of UL 4200A–2023 also contains this language to clarify requirements for multi-action locking mechanisms. Because the actions must be simultaneous, the first action must be maintained while the second and successive actions are completed for the lock to open. If the design of the mechanism allows the battery compartment to open when the first action disengages, the battery compartment does not comply with the requirements of UL 4200A–2023. Therefore, the requirements of the UL standard and this DFR are intended to prevent the scenario envisioned by the Toy Association.

Additionally, regarding the Toy Association's comment on multi-action locking mechanisms presenting a “false positive” in which they appear to be closed, this scenario may occur in both multi-action locking enclosures and enclosures secured via screws or other fasteners. After replacing the battery, consumers may inadvertently neglect to screw or retighten a fastener, leaving the enclosure ineffective. To decrease this risk for all products, regardless of their battery compartment securement design, UL 4200A–2023 requires that all products containing a button cell or coin battery include warnings in product instructions to ensure proper securement of the battery enclosure.

Comment 6: Four commenters (coalition of medical and consumer organizations, CTA, the Consumer Safety Consultancy (CSC), and Mark Strauch) recommend adding tests to prove the effectiveness of multi-action locking mechanisms because, for example, locking mechanisms requiring a push and turn could be opened accidentally. CTA opines that specifying independent hand movements cannot be combinable to a single movement is redundant, because if the end point of the first movement is the starting point of the second movement, then the movements would not be independent. CSC recommends that the requirement for multi-action locking mechanisms be revised to require independent and sequential motions rather than independent and simultaneous motions as proposed in the NPR. Strauch comments that the NPR's clarification that “[t]he movements to open cannot be combinable to a single movement with a single finger or digit” is unnecessary and is an enforcement issue rather than an issue with the standard.

Response 6: Multi-action locking mechanisms that secure button cell or coin battery compartments are adequate

to prevent access to children, so long as the actions cannot be combinable into one single action. Through testing, CPSC staff identified multiple products that were designed with the intent of requiring two independent actions to open the battery compartment that could be defeated by applying a single force to disengage the lock and expose the battery. Accordingly, the NPR included an additional clarification specifying, “[t]he movements to open cannot be combinable to a single movement with a single finger or digit.” This requirement addresses the concerns from the coalition of medical and consumer organizations’ comment that locking mechanisms that require a push and turn could be accidentally opened.

The Commission disagrees with commenters that a final rule should require independent sequential actions, rather than simultaneous actions, because sequential actions can be achieved more easily than simultaneous actions. The requirement for at least two independent and simultaneous actions allows for sequential actions, so long as the first action is held by the consumer while the second action occurs. Independent sequential actions, by contrast, would not require that the first action be held by the consumer while the second action occurs for the battery compartment to open, making the scenario of a child accidentally opening the battery compartment more likely.

UL 4200A–2023, as incorporated into this DFR, requires two independent *and simultaneous* movements that cannot be combined into a single movement. This requirement adequately addresses the risk of opening by young children or inadvertent action by older consumers, and provides testing laboratories with clearer criterion for assessing the adequacy of multi-action locking mechanisms.

F. Whether the proposed secureness test based on UL 4200A–2020 is sufficient to address reasonably foreseeable use and abuse of consumer products containing non-removable batteries.

Comment 7: ITI asked for clarification on how the secureness test is applied to products, questioning whether the force application per the secureness test is to the exterior battery enclosure or to the battery itself.

Response 7: Under § 1263.3(f) of the NPR’s proposed rule, the secureness test was applicable only to button cell or coin batteries that are accessible based on proposed § 1263.3(d), which specifies removing “any part of the battery compartment enclosure that can be opened or removed without a tool or

that can be opened or removed with anything less than two independent and simultaneous movements.”

Section 6.4 in UL 4200A–2023 contains a similar requirement. After removing any components, testers should apply an accessibility probe to any opening of the battery compartment. If the probe makes contact with any battery, the battery is considered accessible, and the secureness test applies a force, directed outwards, using the test hook on the battery itself at all points where an application of a force is possible. This step is intended to demonstrate that the battery cannot be liberated from the product.

Comment 8: The CTA and ITI comment that the NPR incorrectly states that UL 4200A–2020 and IEC 62368–1 do not require abuse testing for products with button cell or coin batteries “that are held fully captive by soldering, fasteners, or any equivalent means.” The commenters explain that UL 62368–1 requires robustness tests for solid safeguards which address accessibility of other hazards such as shock, fire, mechanical, and burn. The commenters state that these requirements are independent of the button cell or coin batteries because they are general requirements for all solid enclosures or barriers.

Response 8: The commenters are correct. UL 62368–1 requires all products containing solid safeguards to comply with the standard’s relevant robustness tests, which include a steady force test (*i.e.*, small surface compression test), drop test, impact test, and other abuse tests based on the specific construction materials (such as glass or thermoplastic). These tests are required regardless of whether the product contains a button cell or coin battery. CPSC staff considered these comments in its revised appraisal of UL 62368–1 and concluded that the securement test was otherwise adequately addressed with other requirements in the standard. See Briefing Memorandum of Staff’s Final Rule Briefing Package.

CPSC’s proposed rule required products with non-removable button cell or coin batteries that are secured to the product via soldering, fasteners, or equivalent means to comply with the secureness test in § 1263.3(f), and not to the abuse testing in § 1263.3(e). UL 4200A–2023 requires that button cell or coin batteries held fully captive by the use of soldering, fasteners such as rivets, or equivalent means must pass the secureness test in section 6.4 of UL 4200A–2023. This requirement is similar to the NPR’s approach and is

adequate to meet the requirements in Reese’s Law.

G. Whether Test Probe 11 of the Standard for Protection of Persons and Equipment by Enclosures—Probes for Verification, IEC 61032, is adequate to verify accessibility of a button cell or coin battery in a battery compartment.

Comment 9: Three commenters (CTA, ITI, and UL Solutions) recommend applying a 45 N force application with Test Probe 11 per UL 62368–1 and UL 4200A–2020 to determine whether a battery can be liberated from a consumer product by children up to age six. CTA and ITI opine that the 50 N force in the NPR’s proposed rule, which was based on IEC 62115, is intended for a scope of children up to 14 years old, and is too great because Reese’s law is intended to protect children up to age six. Furthermore, they state the lack of incidents involving products certified to the 45 N requirement is evidence of adequacy. UL Solutions opines that the toy standard containing the 50 N force, IEC 62115, was developed based on the expectation that toys are continually used by children over its lifetime; whereas UL 4200A–2020 was developed assuming that children would likely come into contact with in-scope products, but not continually over the product’s lifetime.

Response 9: Section 6.3.5.1 of UL 4200A–2023 requires the higher force of 50 N based on requirements in IEC 62115 and IEC 61032. We disagree that the 45 N test in UL 4200A–2020 is adequate because the standard was developed for products that are not continuously used by children over a product’s lifetime. The 50 N compliance test accounts for reasonable, foreseeable use and abuse over the course of a product’s lifetime, presuming that most consumer products are likely to be accessible to children. Indeed, most of the incident data for button cell and coin battery ingestions involve batteries liberated from consumer products by children, including products that are not intended to be used by children. UL 4200A–2023 now relies upon the test probe in IEC 61032, which specifies a force of 50 N. This higher force will adequately protect against children accessing button cell or coin batteries from consumer products during reasonably foreseeable use and misuse conditions, as required by Reese’s Law.

H. Whether there are any additional performance requirements that should be considered, either for specific types of products, or in general.

Comment 10: A coalition of medical and consumer organizations recommends adding a test to prove the effectiveness of multi-action locks. They

add that small, disc-shaped products that require a push and turn double-action can be mimicked by a child putting their hand on the product, putting the product on the floor, and then turning.

Response 10: As explained in response to comments five and six, we agree that some multi-action locking mechanisms can be defeated by applying a single force, effectively combining the two motions of a double-action lock. For this reason, the proposed rule and UL 4200A–2023 clarify that “[t]he movements to open cannot be combinable to a single movement with a single finger or digit.” Based on staff’s testing and review of consumer products, the Commission finds this clarification adequate for test laboratories to determine the effectiveness of multi-action lock designs without additional testing.

Comment 11: Two commenters (a consumer and CTA) discuss the requirement for twist-on enclosures requiring a minimum of 90° rotation to remove. The consumer commenter recommended that a 90° rotation is insufficient whereas CTA considers this requirement adequate.

Response 11: The requirement for minimum rotation angle for twist-on enclosures is based on a requirement in section 5.5(a) of UL 4200A–2020. This requirement is maintained in section 5.5(a) of UL 4300A–2023. Based on staff’s testing and the lack of more stringent requirements in any other standards, CPSC does not have any data to support a greater rotation angle to prevent children ages six years and younger from accessing the button cell or coin battery. Accordingly, the Commission finds the 90° rotation angle requirement as set forth in UL 4200A–2023 compliant with Reese’s Law section 2(a).

I. Whether one or more performance requirements should be based on IEC 62368–1, in addition to, or instead of, performance requirements based on UL 4200A–2020.

Comment 12: Two commenters (ITI and Garmin) discuss the fastener torque requirements based on Table 20 of UL 60065. ITI comments that the torque requirements in § 1263.3(e)(1)(ii) for fasteners based on Table 20 of the *Standard for Audio, Video and Similar Electronic Apparatus—Safety Requirements*, UL 60065, are outdated and superseded by Table 37 of the *Standard for Safety: Audio/Video, Information and Communication Technology Equipment—Part 1: Safety Requirements*, UL 62368–1. Garmin comments that the fastener torque requirements from Table 20 of UL 60065

do not consider small fasteners that cannot withstand the specified torque values.

Response 12: Commission staff advises that Table 20 of UL 60065 is superseded by Table 37 of UL 62368–1 as noted by ITI and Garmin, and recommends updating this reference table. While UL 4200A–2023 does not include this update, the comments do not suggest that this constitutes a failure to satisfy the requirements of Reese’s Law. Further, we disagree with Garmin’s position that Table 20 of UL 60065 (and similarly Table 37 of UL 62368–1) do not account for small fasteners. The torque values in these tables are dependent on the size of the fasteners, with the lowest torque requirement of 0.4 Nm for fasteners up to 2.8 mm in diameter. As discussed in Tab D of Staff’s NPR Briefing Package, fasteners that do not meet the minimum required torque often fail the preconditioning and abuse tests and therefore are inadequate to secure battery compartments and reduce the battery ingestion risk to children.

J. Whether the proposed performance requirements are needed and are likely to eliminate or adequately reduce the ingestion hazard associated with access to button cell or coin batteries from consumer products.

Comment 13: Three commenters (CPHE, FH, and AWA) opine that watches present a significantly lower risk than other products containing button cell or coin batteries. These commenters recommend imposing different requirements for accessing the battery for products designed to be opened by consumers versus those intended to be opened only by professionals. The commenters state that most watches are intended to be opened by professionals because watches cannot be opened without the use of special tool that is not commercially available; therefore, the risk that screws or the battery cover could be lost or discarded by consumers does not exist.

Moreover, the commenters opine that the NPR’s proposed securement requirements are not feasible for watches because of the limited space within the product to implement more complex designs. The Switzerland Federal Department of Economic Affairs, Education and Research (Switzerland) similarly asks why the NPR does not differentiate the requirements for the removal or replacement of the button cell or coin batteries by the consumer themselves from removal by professionals.

Response 14: The NPR proposed that watches would be required to comply

with the requirements of § 1263.3(b) for removable batteries, which requires (1) twist-on covers with minimum torque of 0.5 Nm to open and a minimum angle of rotation of 90°, or (2) fasteners must engage a minimum of two full threads and be held captive to the closure. We agree, however, with the commenters that products containing button cell or coin batteries that require a special tool to access, and can only be replaced by professionals, should have different requirements for battery accessibility than products with consumer-replaceable batteries. In particular, because the risk of discarding or losing an enclosure screw is low for products intended to only be opened by professionals, it is not reasonably necessary to impose a captive screw/fastener requirement for such products to reduce the risk of injury to young children.

Unlike the NPR, UL 4200A–2023 contains different requirements for products with battery compartments only intended to be opened by a professional service center where children are not present. As explained in section II.A of this preamble, CPSC interprets UL 4200A–2023 consistent with its purpose, so that battery compartments intended to only be opened by a professional service center must have both appropriate labeling and inability for the battery compartment to be opened using a common household tool, such as a straight-blade screwdriver, a Phillips screwdriver, pliers, or a coin. Battery compartments that cannot be opened with a common household tool and have warnings stating that the battery is not to be replaced by the consumer are less likely to be opened by a consumer, and therefore do not need to have captive screws to address the ingestion hazard. At the same time, products intended to be opened only by professionals can be opened through reasonable, foreseeable use and abuse, exposing the button cell or coin battery. Accordingly, UL 4200A–2023 reasonably requires use and abuse testing for these products, to reduce the risk of children under six years old accessing a battery from a battery compartment.

Comment 15: JEITA requests an exemption from the scope of the rule implementing Reese’s Law for products that use button cell or coin batteries that are not intended to be replaced by the user or cannot be removed (*i.e.*, user-inaccessible). JEITA notes that IEC 62368–1 does not apply tests and warning label requirements if button cell or coin batteries cannot be removed because such products do not present a battery ingestion risk.

Response 15: Reese's Law defines "consumer products containing button cell or coin batteries" as "a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately." Notes to 15 U.S.C. 2056e. Therefore, the Commission's implementing rule must address batteries that are not intended for consumer replacement. Moreover, we disagree with JEITA that all products containing button cell or coin batteries that are not intended to be replaced are adequately safe under Reese's Law. Consumer products may experience use and abuse during the product's life that may result in batteries becoming dislodged or otherwise accessible to children, even if the batteries are not intended to be user replaceable. For example, incident narratives collected by CPSC describe products without replaceable batteries that fall apart when dropped. See Footnote 1 in Tab A of Staff's Final Rule Briefing Package.

Comment 16: Two commenters (CTA and ITI) recommend that a drop test with three repetitions is adequate for some products. While the commenters state that they agree that ten total drops, as proposed in the NPR, are appropriate for hand-held products such as remote controls, they recommend that three drops are adequate for other portable products such as equipment that is transportable but not intended to be held in hand while in use.

Response 16: As explained in section II.B. above, we agree that requiring ten drops for all consumer products is not reasonably necessary to reduce the risk of button battery access to children. UL 4200A–2023 requires a different number of repetitions for the drop test, based on whether a product is considered "hand-held" or "portable." Per UL 4200A–2023's drop test requirements, portable products are dropped three times and hand-held products are dropped ten times. The Commission finds that the approach taken in UL 4200A–2023 is reasonable and adequately protective under Reese's Law.

Comments in Response to Questions on Marking and Labeling Requirements

K. Whether staff's assessment [in section V.F of the NPR preamble] that virtually all consumer products can accommodate either the full warning or one of the scaled icons is accurate.

Comment 17: Four commenters (The Toy Association, CTA, ITI, and RILA) do not support on-product warning labels, citing limitations due to small product size. Other concerns presented

by commenters pertain to textured surfaces, product material, or unspecified "other" limitations. The Toy Association asserts that labeling requirements will add significant costs in terms of timing, tooling, and molding. Four commenters (JEITA, CTA, Household & Commercial Products Association (HCPA), and ITI) request exemptions from on-product labeling where button cell or coin batteries are not accessible and not intended to be replaced by the consumer.

Response 17: Reese's Law requires that, where practicable, warning labels be placed directly on a consumer product in a manner that is visible to the consumer upon installation or replacement of the battery. Even for products with non-replaceable batteries, Reese's Law requires warning labels to be placed in a manner that is visible upon access to the battery compartment, where practicable. As summarized in Table 1b above, UL 4200A–2023 satisfies Reese's Law's requirements for warning labels on consumer products and consumer product packaging.

L. Whether the internationally recognized safety alert symbol, as shown in yellow color, indicating the presence of a button cell or coin battery, should be required on all consumer products containing such batteries.

Comment 18: A coalition of medical and consumer organizations, RILA, and Landsdowne Labs support on-products alert symbols as some consumers are not aware that the product uses a button cell or coin battery. JEITA and ITI propose products that do not have user accessible batteries be exempt from requiring an alert. Garmin does not support the use of a color for alert symbol on the product.

Response 18: Reese's Law requires products containing button cell or coin batteries not intended for consumer replacement to have a warning label on the consumer product in a manner that is visible to the consumer upon access to the battery "as practicable." 15 U.S.C. 2056e(a)(2)(C)(ii). If it is impracticable to label the product, this information must be placed on the packaging or instructions. *Id.* Section 7 of UL 4200A–2023 meets these requirements. The Commission's NPR proposed an alternative to the on-product warning label to increase the visibility that a product contains a button cell or coin battery and likelihood for all products to feature an alert where it otherwise may not be practicable. However, based on the comments, the proposed yellow color may not be clear or appropriate in all cases. Section 7B of UL 4200A–2023 does not require use of the yellow color

unless the label already uses more than one color.

Comments in Response to Questions on Other Topics Posed in the NPR

M. Whether a later or an earlier effective date would be appropriate to comply with the proposed requirements and to provide specific information to support such a later or an earlier effective date.

Comment 19: Commenters differed in their recommendations for an effective date for a final rule of the Commission, from the proposed 180 days (consumer advocates) to up to 3 years (manufacturer associations). A few commenters provided detailed timelines of the necessary activities (product redesign, testing, certification sourcing, supply chain management, etc.) which ranged from 12 months to 36 months in total. A commenter also contended that additional time is required to accredit third party laboratories for a large variety of product types. Energizer and NEMA request that battery manufacturers be allowed to sell through their existing stocks of child-resistant packaging and labels that were purchased to comply with section 3 of Reese's Law.

Response 19: Because the Commission determines that UL 4200A–2023, which is currently effective as a voluntary standard, meets the performance and labeling requirements in section 2(a) of Reese's Law with regard to consumer products containing button cell and coin batteries, section 2(e) of Reese's Law states that UL 4200A–2023 is treated as a consumer product safety rule as of the date of the Commission's determination. 15 U.S.C. 2056e(d) and (e). However, because the Commission is codifying its incorporation of UL 4200A–2023 in the Code of Federal Regulations, the DFR provides a 30-day effective date for that new rule. As noted, moreover, the Commission is granting a 180-day transitional period of enforcement discretion.

N. In the initial regulatory flexibility analysis (IRFA), the number of small firms impacted and expected cost impact on small firms (as a percentage of annual revenue) of the proposed rule.

Comment 20: One firm commented that staff's estimate of a testing cost of \$150 to \$350 is too low and that a quote received by the firm to perform similar tests exceeded staff's estimate by more than \$1,650 per sample tested. The firm stated this would pose a substantial burden to the firm as they do not possess the necessary skill set or expertise to mitigate these costs by

developing a reasonable testing program in lieu of performing third party testing.

Response 20: The Commission's determination regarding UL 4200A–2023 is not required to be done through notice and comment rulemaking, and thus we have no requirement to provide a final regulatory flexibility analysis (FRFA) for this DFR. Nevertheless, staff collected an additional price quotation from an accredited test laboratory and revised the estimated testing cost from \$150 to \$350 per sample to \$150 to \$460 per sample, as presented in Tab F of Staff's Final Rule Briefing Package. Staff's revised estimate is lower than the estimate provided by the commenter, which we do not find credible as a representative cost.

Comment 21: One firm (Nite Ize) commented that CPSC failed to account for potential costs related to patent filing and enforcement. The firm expressed concern that current product patents for novel product lines would need new filings to provide robust intellectual property protection.

Response 21: CPSC has not been provided with sufficient information to assess whether current consumer product patents would lose any or all value due to the implementation of Reese's Law, or whether a new patent filing would be required to legally enforce intellectual property rights. We note, however, that a new patent filing could provide a longer period of protection, which could mitigate any loss in the value of prior patents.

Comment 22: Nite Ize and the Toy Association state that the IRFA's cost per product line estimates for research, development, and retooling are too low as CPSC failed to account for product lines that require unique solutions.

Response 22: While a FRFA is not required, commenters do not provide specific alternative cost estimates or justification of their view.

Comments Addressing Other Issues

O. International regulations.

Comment 23: Garmin and RILA support harmonization with Australia's regulations addressing performance and labeling requirements for products containing button cell or coin batteries.

Response 23: Reese's Law requires the Commission to promulgate a rule that contains a performance standard that will eliminate or adequately reduce the risk of injury from button cell or coin battery ingestion and warning labels. Reese's Law allows the Commission to rely on a voluntary standard if it determines that a voluntary standard would meet the performance and labeling requirements for a standard issued under section 2(a) of Reese's

Law. 15 U.S.C. 2056e(d)(1). The Australia regulation is not a voluntary standard. However, for the NPR, CPSC staff reviewed the voluntary standards referenced by the Australian regulation, and the Commission preliminarily determined that none of those standards met the requirements of Reese's Law. Tabs D and E of Staff's Final Rule Briefing Package, and section II of this preamble, contain updated assessments of the voluntary standards, including UL 4200A–2023, which is adequate to meet the performance and labeling requirements in section 2(a) of Reese's Law.

P. Silver-oxide battery chemistries.

Comment 24: CPHE, FH, AWA, and Renata SA state that silver-oxide button cell and coin batteries should be excluded from a Commission rule implementing Reese's Law because of a lack of fatal incident data with these batteries and children's inability to access these batteries in watches. Duracell states that silver-oxide batteries should contain different warnings than lithium batteries because they are lower voltage. Switzerland asks whether silver oxide batteries could be excluded from the rule.

Response 24: As reviewed in Tab C of Staff's Final Rule Briefing Package, Jatana *et al.* (2017) found in testing using an animal model that silver-oxide button or coin cell batteries caused severe esophageal injuries. Based on the medical literature, staff does not recommend excepting silver-oxide batteries from the scope of the final rule, and UL 4200A–2023 does not contain such an exception.

Q. Firearm accessories and other household products containing button cell or coin batteries.

Comment 25: Bushnell states that firearm accessories appear to be subject to the proposed requirements, and that the firearm itself is intended to act as the battery door or cover for these products.

Response 25: Modular consumer products or component parts of consumer products containing button cell or coin batteries, like the firearm accessories described by the commenter, must meet the same requirements as other consumer products, independent of their intended use. Modular consumer products can be attached to or installed by a consumer on other products to change the host product's design or capabilities. A modular consumer product, however, could foreseeably remain unattached from the product(s) it is designed to complement. To eliminate or adequately reduce the risk of injury from battery ingestion, these products must independently

meet the performance requirements in the final rule, to prevent unintended access to button cell or coin batteries by children.

Comment 26: A consumer safety consultant (Mary Toro) and RILA state that some products containing button cell or coin batteries are made of fragile materials (such as glass or ceramic materials) that are likely to break during the proposed testing protocol. RILA states that the testing proposed in the NPR is not appropriate for these products, and that alternative test methods should be allowed for such products.

Response 26: The performance requirements in UL 4200A–2023 are likely to cause products made of materials like glass or ceramic to break. Because it is also reasonably foreseeable that a glass or ceramic product may break if knocked to the ground or dropped, which could make accessible to a child a button cell or coin battery contained inside, the button cell or coin battery could be further contained in a battery compartment that meets the requirements of the final rule. The manufacturer can test its product to ensure the product meets the requirements of the final rule, or use in its product a battery compartment that has already been tested or certified to the requirements, as allowed by 16 CFR part 1109.

R. "Try Me" buttons.

Comment 27: A consumer asks for clarification whether "Try Me" buttons containing button cell or coin batteries, that are used only in stores and not intended for sale, are within the scope of the final rule. UL Solutions states that products can incorporate "Try Me" buttons in retail displays or as part of product packaging, and their disposal should be addressed.

Response 27: "Try Me" buttons are within the scope of the final rule because they are consumer products that are used by consumers. Purchase of a product is unnecessary to be considered a "consumer product" under CPSC's jurisdiction. 15 U.S.C. 2052(a)(5) (stating, *inter alia*, that a consumer product is for "the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise."). Consumers, including children, are subject to hazards associated with "Try Me" buttons. "Try Me" buttons may experience drops, impacts, and other patterns of use and abuse similar to any other product within the scope of the final rule and are therefore subject to the rule. In fact, CPSC is aware of at least

one incident involving a coin battery from a “Try Me” button.¹²

S. Use of color in the requirements for marking and labeling.

Comment 28: Several commenters (JEITA, Duracell, Garmin, HCPA, and CTA) state that the use of color on packing, instructions, or manuals, and on some consumer products, would be challenging and add costs to the manufacturing and printing process, particularly for those materials that do not already incorporate color. Duracell and Technet also stress that various product safety standards (e.g., ASTM F963, ANSI C18.3, or ANSI Z535 series) do not mandate the use of colors and accept black and white printing or contrasting colors to the background. Commenters state, however, that if color is used for the signal panel, then colors should conform to ANSI Z535.1 safety colors that correspond to the safety message. The Toy Association and RILA state that the use of color may not be reasonable to print on certain product materials, for example, colored or textured plastics.

Response 28: Applying color to some materials (e.g., consumer product packaging, manuals, or other collateral material) that do not already contain color may present a burden to some manufacturers. UL 4200A–2023 requires the use of color when the subject materials already use printed color processing; otherwise, the use of black and white or contrasting colors is acceptable. The use of color is not specified in Reese’s Law; thus this variation from the NPR does not conflict with the statute and is safety neutral because the label or icon will visually align with other information on the display while ensuring that it is noticeable due to its contrast or color.

T. Text size, icons, and alternative symbols for marking and labeling.

Comment 29: Renata Batteries, ITI, The Toy Association, RILA, BAJ, and Duracell express cost concerns with increased packaging sizes required to accommodate larger warning labels and font sizes, especially for small products. Another commenter states that the minimum letter size requirements for packaging warnings may make other warnings on product packaging less prominent.

Response 29: The NPR proposed that font size requirements for both on-product and on-packaging warning labels be determined based on the size of the principal display panel (generally the front face) of the package or the product display panel (such as the

surface area on, near, or in the battery compartment). Reese’s Law requires that warning labels clearly identify the hazard of ingestion, and this requirement is met when warning labels are displayed prominently on the principal display panel. For very large products or packages with principal display panels exceeding 400 inch², the required letter size could be larger than standard font sizes usually referenced in other standards.

UL 4200A–2023 contains the same size requirements set forth in the NPR. The minimum letter size is comparable to font sizes in other standards, and therefore of similar prominence when displayed on the same panel. The largest packaging will have ample room for additional warnings that are of comparable size to the requirements in the NPR. This level of prominence is appropriate to inform consumers which products contain button cell or coin batteries and to adequately reduce the risk of injury from ingestion.

Comment 30: A consumer (Fo Xu) asks how to determine the size of the text for consumer products and its packaging and whether it is acceptable to use smaller size labels on the consumer products. Energizer requests clarification whether CPSC will identify the surface size for which the alternative on-product label can be used, or whether manufacturers can use reasonable judgement.

Response 30: The NPR proposed that consumer products be durably and indelibly marked with a warning label on the product display panel that alerts the consumer of the presence of a button cell or coin battery. “Product display panel” was defined in proposed § 1263.2(f). The NPR proposed that text size be determined based on table 1 in the regulation text, or if on a sticker label, using the minimum size requirements in § 1263.4(a)(7). UL 4200A–23 incorporates these requirements from the NPR. The minimum text size is dependent on the size of the principal display panel or the product display panel. Manufacturers can use alternative on-product labels in situations where the full label does not fit in the measured product display panel area, as described in UL 4200A–2023.

Comment 31: The Toy Association recommends that for consumer product packaging and instructions, the “Keep Out of Reach” icon be changed to the safety alert symbol for coin batteries because the intent of the icon is not to keep the consumer product away from children.

Response 31: We agree with the commenter. Some products that contain

button cell or coin batteries are intended for use by children, so using the “Keep Out of Reach” icon on those products may confuse consumers by appearing to instruct caregivers to keep the product, rather than the battery, away from children. To prevent consumer confusion, UL 4200A–2023 provides the option of replacing the “Keep Out of Reach” icon on consumer product packaging, as well as instructions, with the safety alert symbol to indicate “Warning: Contains Coin Battery.” Accordingly, manufacturers will have a choice based on the product’s intended user. See Tab D of Staff’s Final Rule Briefing Package for a more detailed discussion of this issue.

Comment 32: CTA states that in the NPR the proposed symbol for “Warning: Contains Coin Battery” has a different aspect ratio and is rotated farther than the internationally accepted symbols for coin and button cell batteries and that the symbol should match internationally recognized symbols.

Response 32: While UL 4200A–2023 includes the icon from the NPR, the button cell or coin battery portion of the symbol can be replaced with other internationally recognized symbols in ISO 7000–W0001 and IEC 60417–6367, to have consistency.

U. Tolerances for values specified in the proposed rule.

Comment 33: ITI comments that the proposed rule did not include tolerances for its specified values and opines that the purpose of tolerances is to give reasonable allowances (e.g., manufacturability and testability) that will not have a significant impact on test results. The commenter contends that eliminating tolerances could force unnecessary retesting or could make it impractical to apply the test without custom test equipment. ITI recommends including tolerances in the rule that align with voluntary standards.

Response 33: Because the Commission is incorporating by reference UL 4200A–2023 as the mandatory standard, tolerances as stated in the UL standard are included in the final rule.

V. Warning label permanency.

Comment 34: RILA states that the permanency requirement for warning labels in the NPR is unclear. One commenter recommends on-product permanency be tested in accordance with the test requirements in UL 62368–1, section F.3.9.

Response 34: We agree with the commenter that on-product warning label permanence should comply with the test requirements in UL 62368–1: F.3.9. This test evaluates the legibility of printed or screened markings and

¹² See Footnote 6 in Tab A of the Staff’s Final Rule Briefing Package.

ensures adhesive labels cannot be easily removeable by hand. Section 7D of UL 4200A–2023 includes requirements for label permanence. All warning statements or icons shall be prominent, legible, easily discernable under normal lighting conditions, and permanently marked; and printed and screened markings are tested in accordance with the label permanence test method adapted from UL 62368–1, section F.3.10 (consistent with the requirements in UL 62368–1: F.3.9).

W. CPSC's statutory authority.

Comment 35: The AWA filed a late comment stating that certain parts of the NPR's proposed rule relating to securement of battery compartments constitute design or construction standards, which are not allowed by the CPSC or Reese's Law.

Response 35: To meet the performance requirements in UL 4200A–2023 for securement of battery compartments, manufacturers may choose to use either any type of fastener that requires a tool of the manufacturers' choice, or a multi-action locking mechanism. The market already employs many different battery compartment enclosure designs that depend on the size, shape, and materials of the consumer product. For example, remote controls include battery compartments that are either secured with screws or that slide out of the base (and typically require two independent and simultaneous actions to do so); many garage door openers require a tool to open but do not use screws or twist-on access covers; and battery compartments in light-up clothing are frequently stitched into the clothing.

Additionally, the UL 4200A–2023 performance requirements specify that battery compartments for replaceable batteries using screws or fasteners are to remain captive to the battery compartment door, cover, or closure when loosened. These performance requirements do not specify how the manufacturer must design the battery compartment to ensure the screw or fastener remains captive. Many possible solutions exist, including a retaining washer, a press fit cap, a tether, or other means.

X. Product categories.

Comment 36: In response to the April 11, 2023 **Federal Register** notice requesting comment on the Paperwork Reduction Act (PRA) burden associated with non-children's products subject to the proposed rule (88 FR 21652), the China National Center of Standards Evaluation and P.R. China suggest that products be categorized by risk level depending on how frequently a child comes into contact with the products,

and that CPSC should develop a list of products to which the regulation applies.

Response 36: Although this comment was filed in response to the PRA notice, the comment is about the substance of the rule. The commenters' suggestion to broadly qualify implementation of Reese's Law is contrary to the requirements of the statute, which requires CPSC to promulgate a rule or identify a voluntary standard, with performance and labeling requirements, for all consumer products that contain or are designed to use button cell or coin batteries. The rule or voluntary standard must eliminate or adequately reduces the risk of ingestion to children six years old or younger during foreseeable use and misuse conditions. Accordingly, the Commission will not adopt the commenters' suggestion to exclude from the Commission's implementation of Reese's Law a potentially large number of consumer products that are covered by the law and present at least some degree of ingestion hazard.

Y. Toy products.

Comment 37: In response to the April 11, 2023, **Federal Register** notice requesting comment on the PRA burden associated with non-children's products subject to the proposed rule (88 FR 21652), Switzerland asks why products containing button cell or coin batteries that are subject to Reese's Law must fulfill more stringent requirements than those imposed for toys that are compliant with the toy standard of ASTM F963, as incorporated by reference in 16 CFR part 1250.

Response 37: Although this comment was filed in response to the PRA notice, the comment is about the substance of the rule and not about the paperwork burden. Section 4 of Reese's Law, Notes to 15 U.S.C. 2056e, specifically exempts "any toy product that is in compliance with the battery accessibility and labeling requirements" of 16 CFR part 1250. Accordingly, toy products are not within the scope of the rule and are already covered by the existing toy standard. However, we agree with the commenter that the requirements for children's and non-children's products that contain button cell or coin batteries that are subject to this final rule are more stringent than those imposed for toys. On March 20, 2023, CPSC staff sent a letter to the ASTM F15.22 toy subcommittee requesting that the subcommittee consider changes to ASTM F963 which would adequately

address incidents and hazards involving toys.¹³

Comments Addressing the PRA

Z. The accuracy of CPSC's estimate of the burden of the proposed collection of information.

Comment 38: ITI, CTA, JEITA, AWA, and RILA believe that the CPSC underestimated the burden of the collection of information proposed in the NPR. ITI believes that the labor rates used may under-represent the burden cost. ITI and RILA request that CPSC provide additional detail on how the PRA burden estimates were derived. While CTA indicates that it is standard practice within the technology sector to include warnings on product labels, the labeling is different enough to warrant additional hourly PRA burden associated with labeling. Relatedly, ITI suggests that product labeling should not be considered "usual and customary" and is within the definition of "PRA burden."

ITI indicates that manufacturers may have more than two product families and therefore the estimate of 15,363 firms with 2 products each understates the number of unique non-children's products containing coin/button cells on the U.S. market.

Response 38: Based upon the comments received, CPSC is adjusting its burden estimates upward, as shown in Table 6 in this preamble. Additionally, CPSC adopts a higher wage rate to represent total compensation costs for private industry workers in goods producing industries. We provide the substance of this revised PRA burden estimate in section X of this preamble.

AA. Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques when appropriate, and other forms of information technology.

Comment 39: JEITA notes that the final rule would impose requirements different from those of international standards, and that this will burden manufacturers as labeling and testing for products intended for use in the United States would need to be completed separately from labeling and testing for other markets.

Response 39: Burdens and potential efficiencies associated with testing to international standards, in addition to CPSC standards, are outside the scope of

¹³ Staff's letter to the ASTM F15.22 subcommittee can be found here: <https://www.cpsc.gov/s3fs-public/Letter-to-ASTM-F15-22-Reeses-Law-NPR-230320.pdf?VersionId=6ZGPs5nSLhBGIFdoz1WHF1wo.oOgarH>.

PRA burden estimates for the proposed rule.

BB. The estimated burden hours associated with labels and hang tags, including any alternative estimates.

Comment 40: ITI, CTA, JEITA, and AWA provide estimates of hourly burden for various industry sectors. *See* Tab A, Issue 36, in Staff's Final Rule Briefing Package. CPSC did not receive any detailed estimates on the total number of respondents to which this collection would apply, but data provided by various commenters on the number of firms to which the collection would apply imply that CPSC has likely overestimated the number of respondents. Commenters provided alternative estimates for the frequency of response based upon the number of product families to which the rule might apply. However, these estimates were not provided at the establishment level and are therefore difficult to compare to CPSC estimates, which are based on U.S. Census Bureau establishment data.

Response 40: Although burdens will vary for different industry sectors and by product as pointed out by commenters, the estimates provided by commenters generally support the Commission's average burden calculations. CPSC assumes, moreover, that industry sectors responding to the public notice likely will experience

comparatively large impacts from implementation of Reese's Law.

CC. The estimated respondent cost other than burden hour cost.

Comment 41: JEITA believe that the cost of test samples should be included in the estimated respondent cost.

Response 41: According to guidance provided by the Office of Management and Budget (OMB) and General Services Administration (GSA), the burdens calculated under the PRA typically do not include estimating the cost of test samples. *See* <https://pra.digital.gov/about/>.

Comments Addressing Out-of-Scope Issues

Tab A of Staff's Final Rule Briefing Package discusses comments received on topics that are out of scope for this rulemaking.

IV. Commission Determination Regarding UL4200A–2023 and Description of the Final Rule's Requirements

After consideration of the public comments summarized in section III of this preamble and Staff's Final Rule Briefing Package, and for the reasons given in this **Federal Register** notice, the Commission determines that UL 4200A–2023 meets the performance and labeling requirements in section 2(a) of

Reese's Law for consumer products that contain button cell or coin batteries. 15 U.S.C. 2056e(d)(1). The Commission does not make this determination with respect to the labeling of battery packaging, because UL 4200A–2023 does not address the labeling of battery packaging. Pursuant to section 2(e) of Reese's Law, UL 4200A–2023 is a consumer product safety rule on the date the Commission makes this determination, September 8, 2023. However, because the Commission is codifying the requirements in the Code of Federal Regulations, for purposes of the direct final rule, the rule is effective 30 days after publication in the **Federal Register**. Furthermore, in recognition of the potential hardship resulting from immediate effectiveness of UL 4200A–23 as a mandatory standard in accordance with Reese's Law, the Commission is granting a 180-day transitional period of enforcement discretion.

Table 3 summarizes the performance requirements in UL 4200A–2023 applicable to consumer products with battery compartments for replaceable button cell or coin batteries, and Table 4 summarizes the standard's performance requirements applicable to consumer products with battery compartments for non-replaceable button cell or coin batteries.

TABLE 3—SUMMARY OF PERFORMANCE REQUIREMENTS IN UL 4200A–2023 FOR CONSUMER PRODUCTS WITH BATTERY COMPARTMENTS FOR REPLACEABLE BUTTON CELL OR COIN BATTERIES

Button cell or coin batteries must not become accessible or liberated when tested to these requirements:

Performance Requirements for Battery Compartment Securement (UL Section 5.2–5.6)	
Battery Compartment Securement Options (UL Section 5.5–5.6).	<i>Option 1:</i> Coin, screwdriver, or other tool. • Captive screws. ○ Exceptions for products containing batteries not intended to be replaced by the consumer. Such products shall have instructions and warnings that clearly state the battery is not to be replaced by the consumer. ○ <i>Exception 1:</i> Products that can only be accessed through the removal of multiple enclosures or panels using a tool. ○ <i>Exception 2:</i> Products that are only to be opened by a professional service center (where children are not present). • Two threads engaged or minimum torque + spin angle. <i>Option 2:</i> At least two independent & simultaneous hand movements. • Shall not be combinable to a single movement with a finger or digit.
Accessibility Test (UL Section 5.3–5.4).	Open or remove any part of the compartment not meeting <i>Option 1</i> or <i>Option 2</i> . Apply Tension Test for Seams from ASTM F963 on pliable materials, using a force of 70.0 N (15.7 lbf). Determine whether Test Probe 11 from IEC 61032 can touch the battery.
Preconditioning Requirements (UL Section 6.2)	
Preconditioning in Oven (UL Section 6.2.1).	Thermoplastics—7 hours at 158 °F or greater, based on operational temperature.
Simulated Battery Replacement (UL Section 6.2.2).	Open/Close and remove/install battery 10 times.
Use and Abuse Tests (UL Section 6.3)	
Drop Test (UL Section 6.3.2)	Handheld products are 10 drops while portable products are 3 drops. Each drop is from 1 m (39.4 in) on hardwood, in positions likely to produce maximum force.
Impact Test (UL Section 6.3.3)	3 impacts on battery compartment with steel sphere, 2 J (1.5 ft-lbf) of energy.
Crush Test (UL Section 6.3.4)	330 N ± 5 N (74.2 lbf ± 1.1 lbf) for 10 s, using 100 by 250 mm (3.9 by 9.8 in) flat surface.

TABLE 3—SUMMARY OF PERFORMANCE REQUIREMENTS IN UL 4200A–2023 FOR CONSUMER PRODUCTS WITH BATTERY COMPARTMENTS FOR REPLACEABLE BUTTON CELL OR COIN BATTERIES—Continued

Compression Test (UL Section 6.3.4A).	Test from 16 CFR Part 1250, using a force of at least 136 N (30.6 lbf).
Torque Test (UL Section 6.3.4B)	Test from 16 CFR part 1250, using a torque of at least 0.50 Nm (4.4 in.-lbf).
Tension Test (UL Section 6.3.4C) ..	Test from 16 CFR part 1250, using a force of at least 72.0 N (16.2 lbf).
Probe for Accessibility (UL Section 6.3.5).	Apply 50 N to 60 N (11.2 lbf to 13.4 lbf) with Test Probe 11 from IEC 61032 to confirm compliance.

TABLE 4—SUMMARY OF PERFORMANCE REQUIREMENTS IN UL 4200A–2023 FOR CONSUMER PRODUCTS WITH BATTERY COMPARTMENTS FOR NON-REPLACEABLE BUTTON CELL OR COIN BATTERIES

Products that incorporate button cell or coin batteries that are not intended for user removal or replacement shall effectively prevent removal of the battery by the user or children.

Option 1—Not Accessible (UL Section 5.7(a)).	• Made inaccessible by an enclosure that meets the same applicable preconditioning and use and abuse test requirements as battery compartments for replaceable batteries. • Secured with soldering, fasteners such as rivets, or equivalent means. • Confirmed with secureness test: test hook applies a force of 20 N $\pm$ 2 N (4.5 lbf $\pm$ 0.4 lbf) directed outwards for 10 s, at all possible points. Battery cannot liberate from the product.
Option 2—May be Accessible (UL Section 5.7(b)).	

The warning label requirements for consumer products and consumer product packaging in UL 4200A–2023 are substantively similar to the warning label requirements in the NPR (88 FR 8706–09), with the following differences:

- Colored markings must comply with the ISO 3864 series of standards;
- Color is required only when the markings are printed on a label using more than one color;
- Manufacturers may choose to use either the “Keep Out of Reach of Children” icon or the “Warning: Contains Coin Battery” icon on the consumer product packaging label;
- Permanence of markings is tested consistent with the requirements in UL 62368–1, section F.3.9;
- Inclusion of an additional warning statement in instructions and manuals to “Always completely secure the battery compartment. If the battery compartment does not close securely, stop using the product, remove the batteries, and keep it away from children.”
- Removal of requirements for battery package warnings because they are being finalized in a separate final rule, and removal of certain performance and technical data requirements proposed under section 27(e) of the CPSA, which are not being finalized at this time.

In the following discussion, we provide a section-by-section summary of the final rule.

A. Section 1263.1 Scope, Purpose, Effective Date, and Exemption

Final rule § 1263.1(a) explains the scope and purpose of the safety standard required by Reese’s Law, as proposed in the NPR, with two modifications: the removal of the

provision for units, which is addressed instead in UL 4200A–2023, and removal of the provision for battery package labeling, which is addressed in a separate final rule. 15 U.S.C 2056e, Public Law 117–171. Based on section 2 of Reese’s Law, the scope of the final rule includes consumer products containing button cell or coin batteries, including the packaging of such consumer products and accompanying literature.

Section 1.3 of UL 4200A–2023 provides the scope of the voluntary standard, stating that the requirements apply to consumer products containing button batteries or coin cell batteries.¹⁴ This scope is consistent with Reese’s Law, which defines a “consumer product containing button cell or coin batteries” as “a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.”¹⁵ This definition includes products that are not

¹⁴ Section 1.3 of UL 4200A–2023 also states that the standard does not include “products that by virtue of their dedicated purpose and instructions are not intended to be used in locations where they may be accessed by children, such as products for dedicated professional use or commercial use in locations where children are not normally or typically present.” The Commission interprets this exclusion from the scope of the standard consistent with the Commission’s jurisdictional authority in section 3 of the CPSA. For example, products used solely in professional settings are within the jurisdiction of the Occupational Safety and Health Administration. However, consumer products generally available for use or purchase by consumers are within the Commission’s jurisdiction. 15 U.S.C. 2052(a)(5).

¹⁵ Notes to 15 U.S.C. 2056e. The term “consumer product” has the same meaning as that in section 3(a) of the Consumer Product Safety Act (CPSA). 15 U.S.C. 2052(a).

sold with a battery but are designed to use a button cell or coin battery.

Section 1263.1(b) of the final rule establishes the effective date of the direct final rule. Because the Commission determines that UL 4200A–2023 meets the requirements in section 2(a) of Reese’s Law, section 2(e) of Reese’s Law provides that the voluntary standard is treated as a consumer product safety rule as of the date of the Commission’s determination. However, for the direct final rule, the effective date is 30 days after publication, as explained in section VII of this preamble. Consistent with section 6 of Reese’s Law (Notes to 15 U.S.C. 2056e), the rule requires that all consumer products and packaging containing button cell or coin batteries that are subject to the final rule, and that are manufactured or imported 30 days after publication of the final rule in the **Federal Register**, must comply with the requirements of this part. The Commission is granting a 180-day transitional period of enforcement discretion, to begin September 21, 2023.

Final rule § 1263.1(c) describes the exemption in Reese’s Law for toy products that meet ASTM F963, as incorporated into 16 CFR part 1250. UL 4200A–2023 excludes the same products from its scope.

Final rule § 1263.1(d) retains the exception for button cell and coin batteries that do not pose an ingestion hazard as proposed, meaning zinc-air batteries. This exception is also stated in UL 4200A–2023.

B. Section 1263.2 Definitions

Final rule § 1263.2 provides applicable definitions as proposed in the NPR, explaining that the definitions in section 3 of the CPSA and section 5

of Reese's Law also apply to this rule. The final rule codifies several definitions from Reese's Law relevant to requirements for consumer products containing button cell or coin batteries, such as "button cell or coin battery" and "consumer product containing button cell or coin battery." Definitions related to battery package labeling are being finalized in a separate final rule.

C. Section 1263.3 Requirements for Consumer Products Containing Button Cell or Coin Batteries

Final rule § 1263.3 incorporates by reference the requirements in UL 4200A–2023, approved on August 30, 2023, as the mandatory standard for performance and labeling of consumer products containing button cell or coin batteries. Sections 5 and 6 of UL 4200A–2023 contain performance requirements, and labeling requirements are in sections 7 and 8 of UL 4200A–2023. Tabs D and E of Staff's Final Rule Briefing Package, and Tables 3 and 4 in this preamble, describe the performance and labeling requirements in UL 4200A–2023 that are incorporated by reference.

V. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that consumer products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children's products.

Non-Children's Products. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers per 15 U.S.C. 2052(a)(11)) of a non-children's product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CSPSC-enforced requirements. 15 U.S.C. 2063(a)(1). Section 14(g) of the CPSA contains content and availability requirements for certificates. 15 U.S.C. 2063(g).

Children's Products. A "children's product" is a consumer product that is "designed or intended primarily for children 12 years of age or younger." 15 U.S.C. 2052(a)(2). Section 4 of Reese's Law specifically exempts from the performance and labeling requirements in section 2 of the law, any toy product that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, the mandatory toy

standard. However, all non-toy children's products that contain button cell or coin batteries are subject to the final rule and must be tested by a CPSC-accepted third party laboratory and certified as compliant.

The following factors are relevant when determining whether a product is a children's product:

- manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- the Age Determination Guidelines issued by CPSC staff in January 2020, and any successor to such guidelines.

Id. "For use" by children 12 years and younger generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children's products, for example, may be decorated or embellished with a childish theme, be sized for children, or be marketed to appeal primarily to children. *Id.* § 1200.2(d)(1).

Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify, based on a third party conformity assessment body's testing, that the product complies with the applicable children's product safety rule. 15 U.S.C. 2063(a)(2). The Commission's requirements for children's product testing and certification are codified in 16 CFR part 1107. Section 14(a) of the CPSA also requires the Commission to publish a notice of requirements (NOR) for a third party conformity assessment body (*i.e.*, testing laboratory) to obtain accreditation to assess conformity with a children's product safety rule. 15 U.S.C. 2063(a)(3)(A). Because some consumer products that contain button cell or coin batteries are children's products, the direct final rule incorporating by reference UL 4200A–2023 is a children's product safety rule, as applied to those products.

The Commission published a final rule, codified at 16 CFR part 1112, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies*, that established requirements and criteria concerning testing laboratories. 78 FR 15836 (Mar. 12, 2013). Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's

product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. CPSC did not receive any comments regarding the proposed NOR. Accordingly, this DFR amends part 1112, as proposed, to add the "Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries" to the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories that apply for CPSC acceptance to test whether children's products containing button cell or coin batteries comply with the new rule will have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1263, *Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries*, in the laboratory's scope of accreditation of CPSC safety rules listed on the CPSC website at: www.cpsc.gov/labsearch.

VI. Incorporation by Reference

Section 1263.3 of the direct final rule incorporates by reference UL 4200A–2023. In accordance with regulations of the Office of the Federal Register (OFR), 1 CFR 51.5(b), section IV of this preamble, Commission Determination Regarding UL4200A–2023 and Description of the Final Rule's Requirements, summarizes the provisions of UL 4200A–2023 that the Commission incorporates by reference into 16 CFR part 1263. The standard is reasonably available to interested parties in several ways. You may purchase a copy from Underwriters Laboratories, Inc (UL), 333 Pfingsten Road, Northbrook, IL 60062, or through UL's website: www.UL.com. Before incorporation by reference, a read-only copy of UL 4200A–2023 is available for viewing on UL's website at: <https://www.shopulstandards.com/>. After CPSC incorporates the UL standard, a free, read-only copy is also available at: <https://www.ulstandards.com/IBR/logon.aspx>. Finally, interested parties can schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: cpsc-os@cpsc.gov.

VII. Direct Final Rule Process and Effective Dates

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5

U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B).

Reese’s Law states that if the Commission determines that an already-effective voluntary standard meets the requirements in section 2(a) of Reese’s Law before promulgating a final rule implementing those same requirements, then the voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) effective on the date of the Commission’s determination, which must be published in the **Federal Register**. 15 U.S.C. 2056e(d)–(e).

The purpose of this direct final rule is to codify in the Code of Federal Regulations the requirements in UL 4200A–2023 as the mandatory standard as for consumer products containing button cell or coin batteries, by incorporating by reference UL 4200A–2023. Although the Commission provided notice and collected comment on similar requirements in the NPR, Reese’s Law does not require a rulemaking if the Commission makes a favorable determination on a voluntary standard; therefore, once the Commission makes the determination under section 2(d) with regard to UL 4200A–2023, the voluntary standard is treated as a consumer product safety rule. Accordingly, additional public comments would not lead to substantive changes to the direct final rule. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 14 days of this notification, the direct final rule will become effective 30 days after publication, on October 23, 2023 (subject to a 180-day transitional period of enforcement discretion). In

accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion that undermines “the rule’s underlying premise or approach” or a showing that the rule “would be ineffective or unacceptable without change.” 60 FR 43108, 43111. As noted, this rule codifies in the CFR a consumer product safety rule created by statute now that the Commission has made a determination under section 2(d) of Reese’s Law. 15 U.S.C. 2056e(d).

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule.

Section 14(a)(3)(A) of the CPSA, however, requires that certification to an NOR is not effective until 90 days after publication of an NOR. 15 U.S.C. 2063(a)(3)(A). Accordingly, to provide the mandatory period for third party laboratories to become ISO accredited and CPSC-accepted to perform testing to part 1263, third party testing and certification of children’s products subject to this rule is not required until on or after December 20, 2023.

VIII. Environmental Considerations

The Commission’s regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have “little or no potential for affecting the human environment” and therefore do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c)(1). Safety standards providing performance and labeling requirements for consumer products containing button cell or coin batteries fall within this categorical exclusion.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* Although the Commission prepared an Initial Regulatory Flexibility Act analysis for the NPR to

implement Reese’s Law and a Final Regulatory Flexibility Act analysis (*see* Tab F of Staff’s Final Rule Briefing Package) that provides information for the public, the Commission’s determination under section 2(d) of Reese’s Law, 15 U.S.C. 2056e(d), that UL 4200A–2023 meets the performance and labeling requirements of section 2(a) of Reese’s Law, 15 U.S.C. 2056e(a), does not require notice and comment rulemaking. Because the Commission has determined that notice and the opportunity to comment are unnecessary for this DFR to codify UL 4200A–2023 as the mandatory standard for consumer products containing button cell or coin batteries, the RFA does not apply with respect to the subject matter of this rule.

X. Paperwork Reduction Act

This DFR contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). Under the PRA, an agency must publish the following information:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of response to the collection of information;
- An estimate of the burden that will result from the collection of information; and
- Notice that comments may be submitted to OMB.

44 U.S.C. 3507(a)(1)(D). In this DFR, the Commission is amending the collection of information for children’s products to add the burden associated with performance and labeling requirements of the final rule, and is establishing an OMB control number for testing, certification, and paperwork retention requirements for general use, non-children’s products subject to this final rule. The Commission proposed to amend the children’s product collection in the NPR (88 FR 8717), and issued a separate **Federal Register** notice to collect comment on the estimated burden for testing and certification of non-children’s products. 88 FR 21652 (April 11, 2023). In accordance with the PRA’s requirements, the Commission provides the following information:

Title: (1) Amendment to Third Party Testing of Children’s Products, approved previously under OMB

Control No. 3041–0159 and (2) creation of new collection for Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Coin Battery Packaging.¹⁶

Type of Review: Amendment of existing collection for Third Party Testing of Children's Products, and creation of a new collection of information for testing and labeling of non-children's products containing or designed to use button cell or coin batteries and labeling of button cell or coin battery packaging. Both children's and non-children's products subject to this rule require: (1) testing of products containing or designed to use button cell or coin batteries, including creating a certificate of conformity; however, unlike non-children's products, children's products require third party testing by a laboratory whose accreditation has been accepted by CPSC to conduct such testing; (2) labeling requirements for products and for button cell or coin battery packaging, including, as applicable, warnings on battery compartments, product packaging, accompanying written materials (*i.e.*, instructions, manuals, hangtags, or inserts)); and (3) recordkeeping requirements.

Summary, Need, and Use of Information: Based on the requirements in Reese's Law, 15 U.S.C. 2056e(a) and (b), the proposed consumer product safety standard prescribes performance requirements for child-resistant battery compartments on consumer products, including children's and non-children's products, that contain button cell or coin batteries, and warning requirements for button cell and coin-battery packaging, consumer product packaging, consumer products, and instructions and manuals. These performance and labeling requirements are intended to reduce or eliminate injuries and deaths associated with children six years old and younger ingesting button cell or coin batteries.

Children's Products: Section 4 of Reese's Law specifically exempts from the performance and labeling requirements in section 2 of the law, any toy product¹⁷ that is in compliance

with the battery accessibility and labeling requirements in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys. However, some consumer products that are not toys subject to the toy standard are considered children's products. A "children's product" is a consumer product that is "designed or intended primarily for children 12 years of age or younger." 15 U.S.C. 2052(a)(2). The Commission's regulation at 16 CFR part 1200 further interprets the term. Section 14 of the CPSA requires that children's products be tested by a third party conformity assessment body, and that the manufacturer of the product, including an importer, must issue a children's product certificate (CPC). Based on such third party testing, a manufacturer or importer must attest to compliance with the applicable consumer product safety rule by issuing the CPC. The requirement to test and certify children's products falls within the definition of "collection of information," as defined in 44 U.S.C. 3502(3).

The requirements for the CPCs are stated in section 14 of the CPSA, and in the Commission's regulation at 16 CFR parts 1107 and 1110. Among other requirements, each certificate must identify: the manufacturer or private labeler issuing the certificate; any third party conformity assessment body on whose testing the certificate depends; the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

The Commission has an OMB control number, 3041–0159, for children's product testing and certification. This final rule would amend this collection of information to add testing and certification to the performance requirements for child-resistant battery compartments on children's products (that are not toys) that contain button cell or coin batteries, as well as warnings on the packaging of these children's products, the battery compartment of these children's products, and any accompanying instructions and manuals, as set forth in the rule. The Commission did not receive any comment on the NPR's estimated PRA burden for children's products subject to this rule. The requirements in UL 4200A–2023 are materially similar to the NPR

requirements and do not change the Commission's PRA burden analysis. Accordingly, CPSC has submitted the information collection requirements of this final rule for children's products containing button cell or coin batteries to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d).

Non-Children's Products: This collection of information is solely for non-children's consumer products, meaning (1) performance and labeling requirements for products that contain or are designed to use button cell or coin batteries and *are not* designed or intended primarily for children 12 years old or younger, and (2) labeling of packages containing button cell or coin batteries. 15 U.S.C. 2052(a)(2); 16 CFR part 1200. Section 14(a) of the CPSA requires that manufacturers (including importers) of non-children's products subject to a rule issue a general certificate of conformity (GCC).

GCCs certify the products as being compliant with applicable regulations and must be based on a test of each product or a reasonable testing program. Unlike children's products, products that have GCCs are not required to undergo third party testing. Section 14(g) and 16 CFR part 1110 state the requirements for GCCs. Among other requirements, each certificate must identify: the manufacturer issuing the certificate; any laboratory conducting testing on which the certificate depends; the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

CPSC received nine comments in response to the estimated PRA burden for non-children's products. Based on the comments, CPSC is increasing the estimated PRA burden as described in this section of the preamble, and will submit these revised estimates to OMB for review.

Respondents and Frequency: Respondents include manufacturers and importers of non-toy children's products and non-children's products that contain, or are designed to use, button cell or coin batteries. Manufacturers and importers must comply with the information collection requirements when children's and non-children's products that contain button cell or coin batteries are manufactured or imported after the effective date of the rule.

¹⁶ The Commission is finalizing requirements for the labeling of button cell or coin battery packaging in a separate final rule published elsewhere in this issue of the *Federal Register*, but for convenience, consistency with the IRFA, and clarity to stakeholders, we include the PRA requirements for all non-children's products subject to performance or labeling requirements for button cell or coin batteries in this single PRA analysis.

¹⁷ For purposes of Reese's Law, a "toy product" is "any object designed, manufactured, or marketed as a plaything for children under 14 years of age." Notes to 15 U.S.C. 2056e.

Estimated Burden: CPSC has estimated the respondent burden in hours, and the estimated labor costs to the respondent.

Estimate of Respondent Burden for Non-Toy Children's Products: The

hourly reporting burden imposed on firms that manufacture or import non-toy children's products that contain button cell or coin batteries include the time and cost to maintain records related to third party testing, the time to

issue a CPC, and the time to include required warning labels on children's product battery compartments, children's product packaging, and to update instructions or manuals with required warnings.

TABLE 5—CHILDREN'S PRODUCTS ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Total annual responses	Length of response	Annual burden (hours)
Third-party testing, recordkeeping and record maintenance	6,046	5.0 hours	30,230
Certification and labeling	1,209	1.0 hours	1,209
Total Burden .....	.....	.....	31,439

Three types of third party testing of children's products are required: certification testing, material change testing, and periodic testing. Manufacturers must conduct sufficient testing to ensure that they have a high degree of assurance that their children's products comply with all applicable children's product safety rules before such products are introduced into commerce. 16 CFR 1107.20(a). If a manufacturer conducts periodic testing, they are required to keep records that describe how the samples of periodic testing are selected. 16 CFR 1107.21 and 1107.26.

CPSC estimates that 0.4 percent of all children's products sold annually, or 6,046 children's products, are children's products that contain button cell or coin batteries and would be subject to third-party testing under this rule; for each of which 5.0 hours of recordkeeping and record maintenance will be required. Thus, the total hourly burden of the recordkeeping associated with certification is 30,230 hours (5.0 × 6,046). Additionally, battery compartments, product packaging, and instructions and manuals must be updated to include the required warnings statements. We estimate that the time required to make these modifications is about 1 hour per product. Based on an evaluation of a sample of supplier product lines, there are a total of 1,209 affected products; therefore, the estimated burden associated with warnings and labeling is 1,209 hours.

We estimate the hourly compensation of workers in industries that will have PRA-relevant burden imposed by this collection is \$36.80 (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," Sept. 2022, total compensation for all sales and office workers in goods-producing private industries: https://www.bls.gov/news.release/archives/ecec_

12152022.pdf). Therefore, the estimated annual cost to industry associated with the collection burden for non-toy children's products is \$1,156,955 (\$36.80 per hour × 31,439 hours = \$1,156,955.2). No operating, maintenance, or capital costs are associated with the collection.

This estimate is the largest burden reasonably possible, assuming that every manufacturer had to modify three product labels (battery compartment, packaging, and instructions/manual). However, many non-toy children's products that contain button cell or coin batteries already contain some type of warning on the product or product packaging. Accordingly, product modification for warnings and any associated burden could be much lower than the estimate.

Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the "normal course of their activities" are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are "usual and customary." To the extent that warning statements on one or more battery compartments, product packaging, and instructions/manuals are usual and customary for non-toy children's products that contain button cell or coin batteries, CPSC can estimate that no burden hours are associated with the labeling requirements in the proposed rule. We requested comment on this potential estimate of no burden for warning labels and received no comment with regard to children's products. The largest possible burden estimate for warning labels for children's products stated in the NPR was 1,209 hours at a cost of \$44,491 annually. However, because we received no contrary comment on the estimate of no burden for children's products, CPSC

relies on the "usual and customary" exception and finalizes an estimate of no burden.

Estimate of Respondent Burden for Non-Children's Products: The PRA **Federal Register** notice (88 FR 21652) estimating the hourly reporting burden imposed on firms that manufacture or import non-children's products that contain button cell or coin batteries, and firms that manufacture or import button cell or coin batteries, included the time and cost to create and maintain records related to testing of consumer products (including issuing a GCC), as well as product labeling, including required warning labels on, as applicable, consumer product battery compartments, product packaging, and accompanying written materials (*i.e.*, instructions, manuals, inserts, or hangtags).

Though data provided by commenters are helpful, commenters have compared one-time burden estimates to annual respondent burden calculated by CPSC. CPSC assumes suppliers will continue to introduce products on a rolling basis, and that up-front costs will diminish over time.

Based on the comments, however, the Commission has revised the estimated burden. We have removed estimates for point-of-sale notices, including for websites offering the sale of button cell or coin batteries, because this requirement is not being adopted at this time. However, based upon the comments received (Comment 38 in section III of this preamble), CPSC is adjusting the burden estimates upward, as shown in Table 6. Additionally, CPSC adopts a higher wage rate to represent total compensation costs for private industry workers in goods producing industries.¹⁸

¹⁸ The March 2023 hourly total compensation costs for private industry workers in goods producing industries is \$43.62, according to the

TABLE 6—ESTIMATED ANNUAL RESPONDENT BURDEN
[Revisions in **bold, italics**]

Burden type	Respondents	Frequency of response	Hours per response	Annual burden (hours)	Annual burden (costs)
Labeling	15,363	2	1	30,726	\$1,332,586.62
		3	1.25	57,611.25	2,513,002.72
Testing	15,363	2	3	92,178	3,997,759.86
		3	3.5	161,311.5	7,036,407.63
Recordkeeping	15,363	2	1	30,726	1,332,586.62
		3	1.25	57,611.25	2,513,002.72
Total Burden				153,630	6,662,933.10
				276,534	12,062,413.10

CPSC staff used establishment data from the U.S. Census Bureau by North American Industry Classification System (NAICS) code to estimate the number of entities with at least one product subject to the rule. Then, weights were assigned to each NAICS sector to estimate both the duration of the required response as well as the

estimated average number of responses. See Table 7. Additionally, CPSC staff obtained estimates from testing laboratories on the costs of certification testing. For non-children's products, CPSC assumes that firms will test in-house or send the product to a lab for testing, but not both. Children's products (that are not toys) subject to

the rule must be third party tested by a CPSC-accepted laboratory. According to information collected, the cost of third-party testing varies but is consistent with an estimate of \$261.72 per response (\$12,62,413.10 ÷ 3 responses ÷ 15,363 respondents = \$261.72).

TABLE 7—ESTIMATES BY NAICS SECTOR

NAICS code		Industry weight	Estimated PRA hours	Estimated number of responses
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	0.035099	8	4
334290	Other Communications Equipment Manufacturing	0.020788	8	4
334310	Audio and Video Equipment Manufacturing	0.029919	8	4
335210	Small Electrical Appliance Manufacturing	0.003445	8	4
335912	Primary Battery manufacturing	0.005116	8	4
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	0.023391	8	4
339920	Sporting and Athletic Goods Manufacturing	0.061625	2	1
339940	Office Supplies (except Paper) Manufacturing	0.005479	2	1
339999	All Other Miscellaneous Manufacturing	0.037159	2	1
423420	Office Equipment Merchant Wholesalers	0.029336	2	1
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	0.38266	8	4
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	0.131072	4	2
423690	Other Electronic Parts and Equipment Merchant Wholesalers	0.117874	8	4
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	0.060731	2	1
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.056308	2	1

Labor Cost of Respondent Burden for Non-Toy Children's Products.

According to the U.S. Bureau of Labor Statistics (BLS), Employer Costs for Employee Compensation, the total compensation cost per hour worked for all private industry workers in goods-producing industries was \$43.62 (March 2023, https://www.bls.gov/news.release/archives/ecec_06162023.pdf). Based on this analysis, CPSC estimates that labor cost of respondent burden would impose a cost to industry of approximately \$12,062,413 annually

(276,534 hours as stated in Table 6 × \$43.62 per hour = \$12,062,413.08).

Cost to the Federal Government. The estimated annual cost of the information collection requirements to the Federal Government is approximately \$4,448, which includes 60 staff hours to examine and evaluate the information, as needed, for Compliance activities. This is based on a GS-12, step 5 level salaried employee; the average hourly wage rate for a mid-level salaried GS-12 employee in the Washington, DC metropolitan area (effective as of January 2023) is \$51.15 (GS-12, step 5).

This represents 69.0 percent of total compensation (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," September 2022, Table 2., percentage of wages and salaries for all civilian management, professional, and related employees: https://www.bls.gov/news.release/archives/ecec_12152022.pdf). Adding an additional 31.0 percent for benefits brings average annual compensation for a mid-level salaried GS-12 employee to \$74.13 per hour. Assuming that approximately 60 hours will be required annually, this results in an annual cost

of \$4,448 (\$74.13 per hour × 60 hours = \$ 4,447.8).

CPSC has submitted the information collection requirements of this final rule for both children's and non-children's products to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d).

XI. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the Federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

Section 2(a) of Reese's Law requires the Commission to issue a "consumer product safety standard for button cell or coin batteries and consumer products containing button cell or coin batteries." However, if the Commission makes a determination under section 2(d) of Reese's Law, determining that an existing voluntary standard meets the requirements in section 2(a) of Reese's Law, section 2(e)(1) of Reese's Law states that such voluntary standard shall be treated as a consumer product safety standard promulgated under section 9 of the CPSA (15 U.S.C. 2058). Therefore, the preemption provision of section 26(a) of the CPSA applies to all consumer products that fall within the scope of this DFR.

XII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a "major rule." The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a "major rule." Pursuant to the CRA, OIRA designated this rule as not a "major rule," as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1263

Administrative practice and procedure, Batteries, Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement.

For the reasons discussed in the preamble, the Commission amends chapter II, subchapter B, of title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

- 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

- 2. Amend § 1112.15 by adding paragraph (b)(55) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(55) 16 CFR part 1263, Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.

* * * * *

- 3. Add part 1263 to read as follows:

PART 1263—SAFETY STANDARD FOR BUTTON CELL OR COIN BATTERIES AND CONSUMER PRODUCTS CONTAINING SUCH BATTERIES

Sec.

1263.1 Scope, purpose, effective date, and exemption.

1263.2 Definitions.

1263.3 Requirements for consumer products containing button cell or coin batteries.

Authority: 15 U.S.C. 2052, 2056e.

§ 1263. Scope, purpose, effective date, and exemption.

(a) *Scope and purpose.* As required by Reese's Law (15 U.S.C. 2056e, Pub. L. 117–171), this part establishes performance and labeling requirements for consumer products containing button cell or coin batteries to prevent child access to batteries during reasonably foreseeable use and misuse of the consumer product. The part is

intended to eliminate or adequately reduce the risk of injury and death to children 6 years old and younger from ingesting these batteries. This part also establishes warning label requirements for packaging of consumer products containing button cell or coin batteries, these consumer products, and instructions and manuals accompanying these consumer products.

(b) *Effective date.* Except as provided in paragraph (c) of this section, the effective date of § 1263.3 is October 23, 2023.

(c) *Exemption for toy products.* Any object designed, manufactured, or marketed as a plaything for children under 14 years of age that is in compliance with the battery accessibility and labeling requirements of 16 CFR part 1250 is exempt from the requirements of this part.

(d) *Batteries that do not present an ingestion hazard.* Button cell or coin batteries that the Commission has determined do not present an ingestion hazard are not subject to this part. These are: zinc-air button cell or coin batteries.

§ 1263.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) and section 5 of Reese's Law (Notes to 15 U.S.C. 2056e), the following definitions apply for purposes of this part:

Button cell or coin battery means:

(1) A single cell battery with a diameter greater than the height of the battery; or

(2) Any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.

Consumer product containing button cell or coin batteries means a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.

Ingestion hazard means a hazard caused by a person swallowing or inserting a button cell or coin battery into their body whereby:

(1) The button cell or coin battery can become lodged in the digestive tract or airways; and

(2) Can potentially cause death or serious injury through choking, generation of hazardous chemicals, leaking of hazardous chemicals, electrical burns, pressure necrosis, or other means.

§ 1263.3 Requirements for consumer products containing button cell or coin batteries.

Each consumer product containing button cell or coin batteries shall comply with ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries*, approved on August 30, 2023. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email: cpssc-os@cpssc.gov. For information on the availability of this material at NARA, visit <https://www.archives.gov/federal-register/cfr/ibr-locations> or email fr.inspection@nara.gov. A free, read-only copy of the standard is available for viewing on UL's website at <https://www.ulstandards.com/IBR/logon.aspx>. You may also obtain a copy from Underwriters Laboratories, Inc (UL), 333 Pfingsten Road, Northbrook, IL 60062, or through UL's website: www.UL.com.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023-20333 Filed 9-20-23; 8:45 am]

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Part 1263**

[CPSC Docket No. 2023-0004]

Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In February 2023, as required by Reese's Law, the U.S. Consumer Product Safety Commission (CPSC or Commission) issued a notice of proposed rulemaking (NPR) to establish performance and labeling requirements for consumer products containing button cell or coin batteries, and requirements for labeling of button cell or coin battery packages, to eliminate or adequately reduce the risk of injury from ingestion of button cell or coin batteries by children six years old and

younger. Elsewhere in this issue of the **Federal Register**, the Commission is publishing a direct final rule to incorporate by reference a voluntary standard as the mandatory standard for consumer products containing button cell or coin batteries. The Commission issues this final rule to complete Reese's Law requirements for warning labels on the packaging of button cell or coin batteries. Button cell or coin battery packaging subject to this final rule must be certified as compliant with these warning label requirements.

DATES: This rule is effective September 21, 2024. Button cell or coin battery packaging manufactured or imported after September 21, 2024, must comply with this final rule.

FOR FURTHER INFORMATION CONTACT:

William Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone 301-504-7945; email: sbo@cpssc.gov.

SUPPLEMENTARY INFORMATION:**I. Background and Statutory Authority¹**

On February 9, 2023, pursuant to Reese's Law (Pub. L. 117-171, 15 U.S.C. 2056e), the Commission published an NPR to establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries. 88 FR 8692. Consistent with section 2(a) of Reese's Law, the NPR proposed performance and labeling requirements for consumer products containing button cell or coin batteries² and labeling requirements for button cell and coin battery packaging. 15 U.S.C. 2056(a).

CPSC received 38 comments during a 30-day comment period ending in March 2023; four of the comments were duplicates. CPSC received two late-filed comments; one is out-of-scope for this rulemaking. We also received nine comments in response to an April 11,

¹ To implement requirements in Reese's Law for labeling of button cell or coin battery packaging, on September 8, 2023, the Commission voted (4-0) to publish this final rule. The Chair, and Commissioners Trumpka and Feldman, issued statements in connection with their vote, available at: https://www.cpsc.gov/s3fs-public/RCA-Reese-s-Law-Implementation-UL-4200A-2023-DFR-for-Button-Cell-or-Coin-Batteries-and-Draft-FR-to-Amend-Part-1263.pdf?VersionId=V56MNzyWa_iXqZQIKCyOIRtjl9lcoFit.

² The Notes of Reese's Law, 15 U.S.C. 2056e, define the phrase "consumer product containing button cell or coin batteries" as "a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately."

2023 Paperwork Reduction Act (PRA) notice. 88 FR 21652. Most of the public comments concerned performance and labeling requirements for consumer products, which are addressed in the direct final rule, published elsewhere in this issue of the **Federal Register**, establishing 16 CFR part 1263. That direct final rule incorporates by reference ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries*, approved on August 30, 2023 (UL 4200A-2023), as the mandatory standard for consumer products containing button cell or coin batteries.

UL 4200A-2023 does not contain warning label requirements for button cell or coin battery packaging. Accordingly, in this final rule, pursuant to section 2(a)(2)(A) and 2(b) of Reese's Law, we review and respond to the public comments related to warning labels for packaging of button cell or coin batteries and finalize a rule for such warning labels. 15 U.S.C. 2056e(a)(2)(A) and (b). As explained in section I.D of this preamble, based on the comments, the final rule contains several modifications to requirements for battery package labeling from the NPR.³

A. Reese's Law

President Biden signed Reese's Law on August 16, 2022. 15 U.S.C. 2056e. The purpose of Reese's Law is to protect children six years old and younger against hazards associated with the ingestion of button cell or coin batteries during reasonably foreseeable use or misuse conditions. 15 U.S.C. 2056e(a)(1). Section 5 of Reese's Law broadly defines a "button cell or coin battery" as "(A) a single cell battery with a diameter greater than the height of the battery; or (B) any other battery, regardless of the technology used to

³ The information in this final rule is based on information and analysis provided in the August 31, 2023, Staff Briefing Package: Draft Final Rule to Establish a Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Staff's Final Rule Briefing Package), available at: <https://www.cpsc.gov/s3fs-public/Reeses-Law-Implementation-Commission-Determination-Regarding-UL-4200A-2023-and-Draft-DFR-for-Button-Cell-or-Coin-Batteries-and-2-Draft-FR-to-Amend-Part-1263-Labeling-Requirements-for-Button-Cell-or-Coin-Batte.pdf?VersionId=PyTbnom1OemA3BWl9Z11ONzTlyqbcthw>, and on the January 11, 2023, Staff Briefing Package: Draft Proposed Rule to Establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Staff's NPR Briefing Package), available at: <https://www.cpsc.gov/s3fs-public/NoticeofProposedRulemakingSafetyStandardandNotificationRequirementsforButtonCellorCoinBatteriesandConsumerProductsContainingSuchBatteries.pdf?VersionId=kDinNeydktkt3T8RRtzn4u1GTXPRIjEl>.

produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.”⁴⁵ Notes to 15 U.S.C. 2056e.

Section 2(a)(2) of Reese’s Law mandates that the Commission establish, by rulemaking, warning label requirements for consumer products containing button cell or coin batteries, and for packaging of button cell or coin batteries. The warning labels required by section 2(a)(2) of Reese’s Law must (1) clearly identify the hazard of ingestion, and (2) instruct consumers, as practicable, to keep new and used batteries out of the reach of children, to seek immediate medical attention if a battery is ingested, and to follow any other consensus medical advice. 15 U.S.C. 2056e(b).

In a companion rulemaking document, published elsewhere in this issue of the **Federal Register**, the Commission determines that UL 4200A–2023 meets the performance and labeling requirements of section 2(a) of Reese’s Law, and issues a direct final rule to incorporate by reference UL 4200A–2023 as the mandatory standard for consumer products containing button cell or coin batteries. As the scope of UL 4200A–2023 is on consumer products, it does not require the warnings mandated by Reese’s Law for the packaging of button cell or coin batteries. 15 U.S.C. 2056e(a)(2)(A). Accordingly, we issue this final rule to establish warning label requirements for packaging of button cell or coin batteries to complete implementation of section 2 of Reese’s Law.

Section 2(g) of Reese’s Law provides that any time after the promulgation of a final consumer product safety standard under section 2(a), the Commission may initiate a rulemaking

in accordance with 5 U.S.C. 553 to modify the requirements of the standard or revised standard. 15 U.S.C. 2056e(g). Any rule promulgated under section 2(g) of Reese’s Law will also be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058). *Id.*

Section 3 of Reese’s Law requires special packaging, meaning child-resistant packaging, for button cell or coin batteries. These requirements, codified in the Notes to 15 U.S.C. 2056e, are self-implementing, and do not require CPSC to issue a rule. Section 3 of Reese’s Law was effective by operation of the statute on February 12, 2023.

Section 4 of Reese’s Law, Notes to 15 U.S.C. 2056e, states that the special packaging requirements in section 3(a) do not apply with respect to button cell or coin batteries that are in compliance with the marking and packaging provisions of the ANSI Safety Standard for Portable Lithium Primary Cells and Batteries (ANSI C18.3M). This exemption does not apply to the requirements for battery package labeling in section 2 of Reese’s Law, which this final rule implements.

B. Updated Incident Data

Based on information in the National Electronic Injury Surveillance System (NEISS), the NPR reflected staff’s estimate that from 2011–2021, approximately 54,300 emergency room visits were associated with human ingestion, impaction, or insertion of button cell or coin batteries. The data show that these incidents occur most often with children aged 4 years or younger. Ingestion of a button battery has caused severe injuries and deaths: based on data in the Consumer Product Safety Risk Management System (CPSRMS), the NPR identified 25 fatalities from 2016 through 2021. 88 FR 8696–98.

Since the NPR, 2 additional deaths of children in the United States associated with ingestion of button or coin cell

batteries have been added to the CPSRMS database, for the years 2020–2021. Moreover, reporting to CPSC through May 1, 2023, indicates another 5 more recent deaths of children—3 in 2022 and 2 in the first three months of 2023. Combining all reported deaths since 2011, CPSC staff has identified 32 reported deaths in the United States from button cell or coin battery ingestion for the period January 1, 2011 through March 31, 2023. *See* Tab B of Staff’s Final Rule Briefing Package.

Additionally, Tab C of Staff’s Final Rule Briefing Package updates incident data from the National Capital Poison Center (NCPC). Since the NPR, from June 2022 through May 2023, the NCPC reported 2 additional child deaths due to ingestion of button cell or coin batteries. Both cases were from lithium button cell or coin batteries impacted in the esophagus; one battery was impacted for 25 days, the other for 3 days. The children died of hematemesis and sepsis, respectively. This brings the total fatal cases tracked by NCPC to 71 since 1977. Also, since the NPR, from June 2022 through May 2023, NCPC reported 13 additional cases of severe injury from button cell or coin battery ingestion, bringing the total since 1977 to 280.

C. Description of Battery Packaging Labeling Requirements in the NPR

The NPR proposed a rule to address the battery ingestion hazard for children six years of age or younger. Children can potentially gain access to button cell or coin batteries from battery packaging and be exposed to the ingestion hazard. Six out of 119 fatal and nonfatal incident narratives in the CPSRMS refer to loose batteries or battery packaging hazards, and staff estimates that at least 7 percent of NEISS incidents involve loose batteries or batteries liberated from the packaging. Figure 1 shows examples of button cell or coin batteries that, when packaged, are subject to this final rule.

⁴⁴ The definitions in section 5 of Reese’s Law are codified in the notes to 15 U.S.C. 2056e.

⁴⁵ This final rule focuses on addressing button cell and coin batteries under part (A) of the definition because other batteries where the diameter is less than the height, such as AAA cylindrical batteries, do not pose the same type or degree of ingestion hazard as button cell or coin batteries.

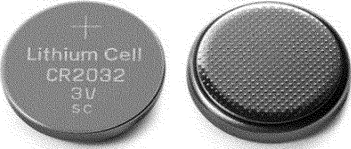
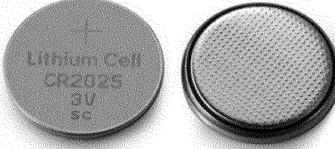
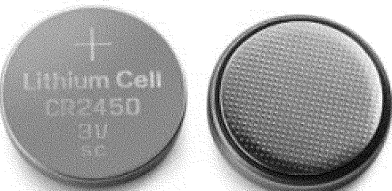
		
LR44 button cell, 11.6mm (0.45 inch) diameter x 5.4mm (0.21 inch) thick	LR754 button cell, 7.9 mm (0.31 inch) diameter, 5.4mm (0.21 inch) thick	LR626 button cell, 6.8 mm (0.26 inch) diameter, 2.6mm (0.10 inch) thick
		
CR2032, 20mm (0.787 inch) diameter	CR2025, 20mm (0.787 inch) diameter	CR2450, 24mm (0.945 inch) diameter

Figure 1. Example button cell and coin batteries.

The NPR assessed warnings requirements in several voluntary standards, and preliminarily concluded that none of the voluntary standards were adequate to meet the requirements in Reese’s Law. Tab C of Staff’s NPR Briefing Package. 88 FR 8704–05. Table 11 in the NPR summarizes the Commission’s assessment of warnings requirements in voluntary standards for button cell and coin battery packaging, finding that none of the voluntary standards adequately address warnings on battery packaging in accordance with Reese’s Law. 88 FR 8705.

Because none of the voluntary standards were deemed to meet the requirements in Reese’s Law, the Commission proposed warnings requirements for button cell and coin battery packaging and packaging of

batteries included separately with consumer products, explaining that labeling of button cell or coin battery packaging is intended to reduce the likelihood of loose batteries being liberated from these products and to warn caregivers of the battery ingestion hazards to children. 88 FR 8706–09. The proposed requirements followed the format requirements in ANSI Z535.4, *Product Safety Signs and Labels*, and were based on warnings found in ANSI C18.3M, ASTM F963, UL 4200A–2020, and other voluntary standards. *Id.*

The NPR also defined two terms relevant to placement of warning labels. The “principal display panel” is the display panel for a retail package of button cell or coin batteries or retail package of a consumer product containing such batteries that is most

likely to be displayed, shown, presented, or examined under normal or customary conditions of display for retail sale. The principal display panel is typically the front of the package. The “secondary display panel” means a display panel for a retail package of a button cell or coin batteries or retail package of a consumer product containing such batteries that is opposite or next to the principal display panel. The secondary display panel is typically the rear or side panels of the package.

The NPR proposed a warning for the principal display panel of the battery packaging, shown in Figure 2, to meet the requirements in section 2 of Reese’s Law.

⚠ WARNING

- **INGESTION HAZARD: DEATH** or serious injury can occur if ingested.
- A swallowed button cell or coin battery can cause **Internal Chemical Burns** in as little as **2 hours**.
- **KEEP** new and used batteries **OUT OF REACH OF CHILDREN**
- **Seek immediate medical attention** if a battery is suspected to be swallowed or inserted inside any part of the body.



Figure 2. Warning of Ingestion Hazard for Battery Packaging.

The NPR proposed that battery packaging include the following warning statements:

- “INGESTION HAZARD: DEATH or serious injury can occur if ingested.” This sentence identifies the hazard of ingestion, as required by section 2(b)(1) of Reese’s Law.
- “A swallowed button cell or coin battery can cause Internal Chemical

Burns in as little as 2 hours.” This sentence provides warning label requirements, as stated in Reese’s Law; an effective warning should have an explanation of how and why ingestion of a button cell or coin battery is hazardous.

- “KEEP new and used batteries OUT OF REACH OF CHILDREN.” This sentence implements language in

section 2(b)(2) of Reese’s Law. In addition, use of the icon recognized for keeping items out of children’s reach is intended to quickly convey the required message and direct the reader’s attention to the label.

- “Seek immediate medical attention if a battery is suspected to be swallowed or inserted inside any part of the body.” This sentence implements language in

section 2(b)(2) of Reese's Law and informs the consumer what actions should be taken if a button cell or coin battery is ingested or inserted into any part of the body. The warning includes the term "inserted" because insertions into the nose can be aspirated into the trachea and lead to ingestion, with the same risk of injury as oral ingestion.

The NPR proposed that the icon incorporated with the warning must be at least 8 mm (0.31 in.) in diameter for visibility, and that text size be calculated per Table 1 in the regulation text (Table 12 in the NPR preamble at 88 FR 8706). The NPR also stated that if space prohibits the full warning with the icon shown in Figure 2 in accordance with the formatting

requirements of Table 1 of the regulation text, packaging is required to use the "Keep out of Reach" icon (Figure 3) on the principal display panel and the warning text must be placed on the secondary display panel, as shown in Figure 4. 88 FR 8707. The icon must be at least 20 mm (0.79 in.) in diameter for visibility.



Figure 3. "Keep Out of Reach" Icon

WARNING **INGESTION HAZARD • DEATH** or serious injury can occur • A swallowed button cell or coin battery can cause **Internal Chemical Burns** in as little as **2 hours** • **KEEP** new and used batteries **OUT OF REACH OF CHILDREN** • **Seek immediate medical attention** if a battery is suspected to be swallowed or inserted inside any part of the body.

Figure 4. Warning Text Without Icon.

To address the hazard of button cell or coin batteries that become loose or separated from packaging, and to provide critical safety-related information should an ingestion incident occur, the NPR proposed that the following information implementing section 2(b)(2) of Reese's Law be placed on the secondary display panel of the packaging:

(1) "Keep in original package until ready to use." This statement instructs consumers to leave the batteries in child-resistant packaging as a means of keeping new batteries out of the reach of children.

(2) "Immediately dispose of used batteries and keep away from children. Do NOT dispose of batteries in household trash." This statement instructs consumers on how to prevent ingestion hazards from used batteries by keeping used batteries out of the reach of children, including out of household trash.

(3) "Call a local poison control center for treatment information." This statement makes more actionable the guidance to "immediately seek medical attention" as described in section 2(b)(2) of Reese's Law, and provides consumers with a resource for obtaining medical advice suitable to their situation. 88 FR 8707.

D. Changes Adopted in the Final Rule

Based on the consideration of comments received and analysis in Staff's Final Rule Briefing Package, the labeling requirements for button cell or

coin battery packaging are being finalized as proposed, with three modifications:

- **Warning label colors:** The final rule clarifies that specific colors on warning labels, in accordance with ANSI Z535, are required only if the label is present in more than one color, to allow flexibility in warning label designs and align with existing requirements in relevant voluntary standards.

- **Warning label letter size:** The final rule clarifies that the minimum text size for warning labels must be based on the product display panel size.

- **Treatment information:** To provide specific guidance to consumers on an available contact for treatment information, the final rule requires that button battery packaging display the National Battery Ingestion Hotline phone number. Additionally, the final rule replaces the warning statement "Call a local poison control center for treatment information" with the more actionable presentation of the National Battery Ingestion Hotline phone number.

E. Scope of Battery Packaging Subject to the Final Rule

This rule finalizes the warning label requirements for packaging of button cell or coin batteries, including batteries packaged separately with consumer products. Although section 4 of Reese's Law, Notes to 15 U.S.C. 2056e, states that the special packaging requirements in section 3(a) do not apply with respect to button cell or coin batteries that are in compliance with the marking and

packaging provisions of the ANSI Safety Standard for Portable Lithium Primary Cells and Batteries (ANSI C18.3M), this exemption does not apply to the labeling requirements of this rule. Therefore, all packages of button cell or coin batteries that fall within the definition of a "button cell or coin battery," except batteries listed in § 1263.1(d) (currently zinc-air batteries), must comply with the warning label requirements in this rule. Consistent with the NPR, the final rule does not require warning labels on zinc-air batteries. These requirements are consistent with ANSI C18.3M; battery packaging can comply with both the labeling requirements in ANSI C18.3M and this final rule.

F. Assessment of Labeling Requirements for Packaging of Button Cell or Coin Batteries in Existing Voluntary Standards

None of the voluntary standards addressing warning labels on button cell or coin battery packaging have been updated since publication of the NPR. Accordingly, and for the reasons further discussed in Part II below, the Commission adopts the NPR's assessment that no existing voluntary standard meets the warning label requirements that section 2 of Reese's Law establishes for battery packaging.

II. Comments on the NPR

Below we summarize and respond to the comments received in response to the NPR that relate to the proposed

requirements for battery package labeling.

Comments in Response to Questions on Marking and Labeling Requirements

A. Whether all button cell or coin battery packaging should include the warning on the principal display panel.

Comment 1: Several commenters, including a coalition of medical and consumer organizations, the Battery Association of Japan (BAJ), Energizer, Duracell, Landsdowne Labs, National Electrical Manufacturers Association (NEMA), and the Consumer Technology Association (CTA), support warning labels on the packaging of button cell and coin battery packaging. The coalition of medical and consumer organizations and Duracell support the use of a conspicuous warning label on the principal display panel, whereas others (BAJ, Energizer, CTA, Information Technology Industry Council (ITI)) request flexibility in the warning label location and the placement of the “KEEP OUT OF REACH” icon, citing limitations of battery packaging size. Seven commenters support warning label placement as allowed by current voluntary standards, as such standards do not mandate the warning label location. BAJ suggests, however, that the icon be accompanied by the warning “KEEP OUT OF REACH” because the icon may not be well known.

Response 1: Reese’s Law requires warning labels on the packaging of button cell or coin batteries and minimum content requirements. Existing voluntary standards (IEC 60086–4 & –5) do not set forth location requirements, or specify that warnings be on the back of the packaging (ANSI C18.3). Existing voluntary standards often do not specify the content of the warning label. While the use of an icon is permissible in voluntary standards, icon use is based on the diameter of the battery.

Consistent with Reese’s Law and the ANSI standard, the final rule requires battery packaging to identify the hazard, explain how to avoid the hazard, and requires that warnings be conspicuous on the front of the packaging where it is more likely to be seen. The final rule requires a warning label on all button cell and coin battery packages within the scope of the rule, regardless of battery chemistry or battery size. The warning’s content also outlines options for a condensed warning label in the form of an icon on the front with additional text to be placed on the back, to accommodate limited space on the battery packaging. The “KEEP OUT OF REACH” text is not required to

accompany the icon; however, manufacturers may choose to include the text voluntarily to clarify the icon’s meaning. The final rule does not include any changes to the warning on the front of the battery packaging as a result of these comments.

B. Whether the requirement for the “Keep Out of Reach” icon to be at least 20 mm in diameter for visibility purposes, when alone on the front of battery packaging, provides a sufficient warning of the ingestion hazard.

Comment 2: Renata SA comments that the 6 mm minimum icon size requirements in the IEC 60086–4 voluntary standard are adequate. BAJ commented that the icon sizes of minimum 20 mm and minimum 8 mm are not necessary because “based on the market results so far” a minimum size of 6 mm icon is sufficient.

Response 2: We do not have the details of the “market results so far” that BAJ references to determine whether the 6 mm icon is sufficiently attention-getting for consumers, recognized by consumers, and adhered to by industry. Based on an evaluation of existing battery packaging, staff assesses in Tab D of Staff’s Final Rule Briefing Package that the recommended sizes of icons in the proposed rule are feasible and likely to get the attention of the consumer. After reviewing a number of battery packages, staff advises that the 20 mm diameter icon is sufficiently large to be visible to most consumers, and sufficiently small to fit on existing battery packaging. The final rule contains no changes in response to these comments.

C. Whether the Commission should require ingestion warnings on zinc-air button cell or coin battery packaging.

Comment 3: Three commenters (Duracell, Energizer, and NEMA) agree that warning labels on zinc-air batteries are not needed regarding the ingestion hazard, citing low risk of injury. Landsdowne Labs Inc., a coalition of medical and consumer organizations, and Dr. Ian Jacobs (Director at the Center for Pediatrics Airway Disorders at the Children’s Hospital of Philadelphia) support warning labels on packaging for zinc-air batteries, because they pose an insertion hazard. BAJ states that labeling on zinc-air batteries should be a recommendation, rather than a requirement, and that if zinc-air batteries are labeled, then they should use the word CAUTION instead of WARNING. Dr. Jacobs and Dr. Jatana (Director of Pediatric Otolaryngology in the Department of Otolaryngology Head and Neck Surgery at Nationwide Children’s Hospital and Wexner Medical Center at Ohio State University)

state that zinc-air batteries pose a risk of injury when inserted into the ear canals and nasal cavities, and should be labeled accordingly.

Response 3: Tab C of Staff’s Final Rule Briefing Package reviews the literature and the incident data regarding ingestion of zinc-air batteries. Staff advises that labeling of zinc-air batteries for an ingestion hazard is unnecessary, and may cause consumer confusion, because zinc-air batteries are not associated with an ingestion hazard.

D. Comments addressing silver-oxide battery chemistries.

Comment 4: The Permanent European Horological Committee (CPHE), Federation of the Swiss Watch Industry (FH), American Watch Association (AWA), and Renata SA state that silver-oxide batteries should be excluded from a Commission rule implementing Reese’s Law because of the lack of data on fatal incidents with these batteries and children’s inability to access them from watches. Duracell states that silver-oxide batteries should contain different warnings than lithium batteries because they are lower voltage. Switzerland asks whether silver oxide batteries could be excluded from the rule.

Response 4: Based on the medical literature, staff does not recommend that silver-oxide batteries be removed from the scope of the final rule. As reviewed in Tab C of Staff’s Final Rule Briefing Package, Jatana *et al.* (2017) found in testing using an animal model that silver-oxide button or coin cell batteries caused severe esophageal injuries.

Comments in Response to Questions on Other Topics Posed in the NPR

E. Whether a later or an earlier effective date would be appropriate to comply with the proposed requirements and to provide specific information to support such a later or an earlier effective date.

Comment 5: Commenters differed in their recommendations for an effective date, from the proposed 180 days (consumer advocates) to up to 3 years (manufacturer associations). Multiple manufacturers, trade associations, and Switzerland provided comments stating that a longer effective date is required to provide compliant products to the U.S. market. A few commenters provided detailed timelines of the necessary activities (product redesign, testing, certification sourcing, supply chain management, *etc.*), which ranged from 12 months to 36 months in total. A commenter also explained that additional time is required to accredit third party laboratories for a large variety of product types. Energizer and NEMA request that battery

manufacturers be allowed to sell their existing stock of child-resistant packaging and labels that were purchased to comply with section 3 of Reese's Law.

Response 5: Arguments made by manufacturers for a longer effective date relate primarily to performance and labeling requirements for consumer products, and not to battery package labeling. For example, battery packaging is not a children's product that requires third party testing; manufacturers can self-certify compliance to labeling requirements. However, the Commission recognizes that warning label requirements may compel manufacturers to revise or reprint existing packaging, and manufacturers may want to consult outside laboratories regarding compliance. Nevertheless, changes to labeling of battery packaging does not require extensive product redesign. To provide time for battery manufacturers to comply with this final rule, the Commission is establishing an effective date of one year after publication in the **Federal Register**, the low end of the time frame sought by commenters for the NPR's proposals, generally.

F. Comments addressing the use of color in the requirements for marking and labeling.

Comment 6: Several commenters (JEITA, Duracell, Gramin, HCPS and CTA) state that the use of color on packing, instructions, or manuals, and on some consumer products would be challenging and, in most cases, add costs to the manufacturing and printing process, particularly to those materials that do not already incorporate color. Duracell and Technet also stress that other product safety standards (e.g., ASTM F963, ANSI C18.3, or ANSI Z535 series) do not mandate the use of colors and accept black and white printing or contrasting colors to the background it is printed on. Commenters state, however, that if color is used for the signal panel, colors should conform to ANSI Z535.1 safety colors that correspond to the safety message. The Toy Association and RILA state that the use of color may not be reasonable for printing on certain product materials, for example, colored or textured plastics.

Response 6: Applying color to some materials (e.g., consumer product packaging, manuals, or other collateral material) that do not already contain color may present a burden to some manufacturers. ANSI Z535.4 provides flexibility for special circumstances that limit the use of colors while preserving the visibility and noticeability of the label by requiring contrast. To address

commenter concerns, the final rule requires the use of color when the subject materials already use printed color processing; otherwise, the use of either black and white or contrasting colors is acceptable. The use of color is not specified in Reese's Law, and with this modification the label or icon will visually align with other information on the display while still being noticeable due to its contrast or color.

G. Comments addressing text size, icons, and alternative symbols for marking and labeling.

Comment 7: Renata Batteries, ITI, The Toy Association, RILA, BAJ, and Duracell express cost concerns with increased packaging dimensions required to accommodate larger warning labels and font sizes, especially for small products. Another commenter states that the minimum letter size requirements for packaging warnings may reduce the prominence of other warnings on product packaging.

Response 7: The NPR proposed that font size requirements for both on-product and on-packaging warning labels be determined based on the size of the principal display panel (e.g., the front face) of the package or the product display panel (e.g., surface area on, near, or in the battery compartment). Reese's Law requires that warning labels clearly identify the hazard of ingestion, and this requirement is met when warning labels are displayed prominently on the principal display panel. For very large products or packages with principal display panels exceeding 400 inch², the required letter size could be larger than standard font sizes usually referenced in other standards. The required letter size in the final rule is proportional to the display panel size and allows easy visibility and noticeability of the label. The minimum letter size is otherwise comparable to font sizes in other standards, and therefore of similar prominence when displayed on the same panel. The largest packaging will have ample room for additional warnings that are of comparable size to the requirements in the final rule. This level of prominence is appropriate to inform consumers which products contain button cell or coin batteries and to adequately reduce the risk of injury from ingestion.

H. Whether the requirement to provide other information related to the safety of button cell or coin batteries is sufficient to address the risk of ingestion and other hazards associated with button cell or coin batteries.

Comment 8: One commenter (Billie Jo Burr) states that labeling should provide consumers with the nationwide poison

control center phone number to ease the process of obtaining assistance quickly.

Response 8: We agree with the commenter that providing consumers with an appropriate contact phone number will provide an actionable step that will ease the process of obtaining assistance quickly if a caregiver suspects a button cell or coin battery ingestion. The National Battery Ingestion Hotline (NBIH) is dedicated solely to addressing battery ingestions, and is therefore an immediate and practical resource available to consumers who suspect a battery ingestion. The final rule adds the contact number for the NBIH, currently 1-(800) 498-8666, on the required warning labels for battery packaging.

Comments Addressing the Paperwork Reduction Act

Tab A of Staff's Final Rule Briefing Package and the companion direct final rule to establish in 16 CFR part 1263 a Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries, published elsewhere in this issue of the **Federal Register**, provide CPSC's final rule PRA burden estimate for battery package labeling, and summarize and respond to comments related to CPSC's PRA burden estimate in the NPR.

III. Description of the Final Rule

This final rule adds to 16 CFR part 1263 warning label requirements for packaging of button cell or coin batteries, including such batteries packaged separately with a consumer product. Primarily, the final rule adds § 1263.4, requirements for labeling of button cell or coin battery packaging. We also add several provisions in the scope and definitions to fully implement and explain the required warnings.

The final rule amends the last sentence in the NPR's proposed § 1263.1(a) to state that part 1263 establishes warning label requirements for "packaging of button cell or coin batteries, including button cell or coin batteries packaged separately with a consumer product," to ensure that the scope of the rule reflects requirements for battery package labeling. The final rule also amends § 1263.1(b) to add a one-year effective date for battery packaging labeling, as explained in section V of this preamble.

Final rule § 1263.2 adds two definitions for the "principal display panel" and the "secondary display panel." Section 1263.4 uses these definitions to explain requirements for the placement of battery package labeling.

Final rule § 1263.4 adds requirements for warning labels for button cell or coin battery packaging, including for such batteries packaged separately with a consumer product. The NPR's warning label requirements are explained in section I.C of this preamble. They are being finalized with the three modifications explained in section I.D of this preamble.

IV. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that consumer products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children's products. Packages of button cell and coin batteries are unlikely to ever be children's products and therefore do not require third party testing. Manufacturers can self-certify compliance with the labeling requirements in this final rule.

Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers per 15 U.S.C. 2052(a)(11)) of a non-children's product that is subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other law enforced by the Commission, to certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a)(1). Section 14(g) of the CPSA contains content and availability requirements for certificates. 15 U.S.C. 2063(g).

V. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule must be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). In the NPR, the Commission proposed that a final rule containing (1) performance and warning label requirements for consumer products containing button cell or coin batteries, and (2) warning label requirements for button cell or coin battery packaging, would become effective 180 days after publication of a final rule in the **Federal Register**. Section II.E of this preamble describes comments from multiple manufacturers and trade associations stating that a longer effective date is required to supply compliant products to the U.S. market. Commenters provided detailed timelines of the necessary activities to become compliant, including time for product redesign, testing, certification sourcing, supply chain management,

and other issues, with the timeline ranging from 12 months to 36 months in total. A commenter also explained that additional time is required to accredit third party laboratories for a large variety of product types.

The Commission recognizes that the rule's warning label requirements may require manufacturers to revise or reprint existing packaging. However, battery packaging is not a children's product that requires third party testing. Manufacturers can self-certify compliance to labeling requirements. Also, changes to labeling of battery packaging do not require extensive product redesign; revising labeling on battery packaging will not require a lengthy timeframe. To provide time for battery manufacturers to comply with this final rule, the Commission establishes an effective date of one year after publication in the **Federal Register**, the low end of the time frame suggested by commenters with respect to the full set of requirements proposed in the NPR.

VI. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have "little or no potential for affecting the human environment," and therefore, do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c)(1). Safety standards providing labeling requirements for packaging of button cell or coin batteries fall within this categorical exclusion.

VII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* However, a regulatory flexibility analysis is not required if an agency certifies that a rule will not have a significant impact on a substantial number of small businesses. Tab H of Staff's Final Rule Briefing Package contains an economic analysis for this final rule establishing labeling requirements for packaging of button cell or coin batteries. Based on the information in that analysis, the Commission certifies that this final rule

will not have a significant impact on a substantial number of small businesses.

VIII. Paperwork Reduction Act

This final rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). For convenience and clarity to stakeholders, section XII of the preamble for the direct final rule "Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries," published elsewhere in this issue of the **Federal Register**, contains the PRA analysis for both rules implementing Reese's Law, including this rule addressing the labeling of packaging of button cell or coin batteries.

CPSC has submitted the information collection requirements of this final rule for button cell or coin battery package labeling to OMB for review in accordance with PRA requirements. See 44 U.S.C. 3507(d).

IX. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the Federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

Section 2(a) of Reese's Law requires the Commission to issue a "consumer product safety standard for button cell or coin batteries and consumer products containing button cell or coin batteries," and section 2(c) of Reese's Law states that a consumer product safety standard promulgated under subsection (a) shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058). Therefore, the preemption provision of section 26(a) of the CPSA applies to all consumer products that fall within the scope of this final rule issued under section 2 of Reese's Law. 15 U.S.C. 2056e.

X. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and

certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, OIRA designated this rule as not a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1263

Administrative practice and procedure, Batteries, Consumer protection, Imports, Infants and children, Labeling, Law enforcement.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1263—SAFETY STANDARD FOR BUTTON CELL OR COIN BATTERIES AND CONSUMER PRODUCTS CONTAINING SUCH BATTERIES

■ 1. The authority citation for part 1263 continues to read as follows:

Authority: 15 U.S.C. 2052, 2056e.

■ 2. Amend § 1263.1 by adding sentences at the end of paragraphs (a) and (b) to read as follows:

§ 1263.1 Scope, purpose, effective date, and exemption.

(a) * * * Additionally, this part establishes warning label requirements

for packaging of button cell or coin batteries, including button cell or coin batteries packaged separately with a consumer product.

(b) * * * Packages of button cell or coin batteries manufactured or imported after September 21, 2024, must meet the labeling requirements for battery packaging in § 1263.4.

* * * * *

■ 3. Amend § 1263.2 by adding the definitions of “Principal display panel” and “Secondary display panel” in alphabetical order to read as follows:

§ 1263.2 Definitions.

* * * * *

Principal display panel means the display panel for a retail package of button cell or coin batteries that is most likely to be displayed, shown, presented, or examined under normal or customary conditions of display for retail sale. The principal display panel is typically the front of the package.

Secondary display panel means a display panel for a retail package of button cell or coin batteries that is opposite or next to the principal display panel. The secondary display panel is typically the rear or side panels of the package.

■ 4. Add § 1263.4 to read as follows:

§ 1263.4 Requirements for labeling of button cell or coin battery packaging.

(a) *General requirements for labeling of button cell or coin battery packaging.*

(1) All warning statements must be

clearly visible, prominent, legible, and permanently marked.

(2) Warning statements must be in contrasting color to the background onto which the warning statement is printed.

(3) Warning statements must be in English.

(4) The safety alert symbol, an exclamation mark in a triangle, when used with the signal word, must precede the signal word. The base of the safety alert symbol must be on the same horizontal line as the base of the letters of the signal word. The height of the safety alert symbol must equal or exceed the signal word letter height.

(5) The signal word “WARNING” and safety alert symbol must be in black letters on an orange background unless this would conflict with paragraphs (a)(1) and (2) of this section or only one color is present, in which case, the signal word and safety alert symbol must contrast to the background on which they are printed. The signal word must appear in sans serif letters in upper case only.

(6) Certain text in the message panel must be in bold and in capital letters as shown in the example warning labels (figure 1 to paragraph (b)(1) and figure 3 to paragraph (b)(2)) to get the attention of the reader.

(7) For labels that are required to be on the packaging of button cell and coin batteries, text size must be dependent on the area of the principal display panel. Text size must be determined based on table 1 to this paragraph (a)(7).

TABLE 1 TO PARAGRAPH (a)(7)—LETTER SIZE FOR RECOMMENDED WARNING LABELS

[Information based on 16 CFR 1500.19(d)(7)]

Letter size measurements in inches								
Display area: inches ²	0–2	+2–5	+5–10	+10–15	+15–30	+30–100	+100–400	+400
Signal word (WARNING)	3/64	1/16	3/32	7/64	1/8	5/32	1/4	1/2
Statement of Hazard	3/64	3/64	1/16	3/32	3/32	7/64	5/32	1/4
Other Text	1/32	3/64	1/16	1/16	5/64	3/32	7/64	5/32
Letter size measurements in cm (for reference only)								
Display area: cm ²	0–13	+13–32	+32–65	+65–97	+97–194	+194–645	+645–2,581	+2,581
Signal word (WARNING)	0.119	0.159	0.238	0.278	0.318	0.397	0.635	1.270
Statement of Hazard	0.119	0.119	0.159	0.238	0.238	0.278	0.397	0.635
Other Text	0.079	0.119	0.159	0.159	0.198	0.238	0.278	0.397

(b) *Warning label requirements for button cell or coin battery packaging.* (1) The principal display panel of the packaging must include the warning

label in figure 1 to this paragraph (b)(1). The icon must be at least 8 mm (0.3 inches) in diameter. The text must state

the following warnings as shown in figure 1 to this paragraph (b)(1).

Figure 1 to Paragraph (b)(1)

⚠ WARNING	
• INGESTION HAZARD: DEATH or serious injury can occur if ingested. • A swallowed button cell or coin battery can cause Internal Chemical Burns in as little as 2 hours. • KEEP new and used batteries OUT OF REACH OF CHILDREN • Seek immediate medical attention if a battery is suspected to be swallowed or inserted inside any part of the body. • For treatment information call: [phone number for the National Battery Ingestion Hotline, currently 1-(800) 498-8666].	

(2) If space prohibits the full warning label shown in figure 1 to paragraph (b)(1), place the icon shown in figure 2 to this paragraph (b)(2) on the principal

display panel with the text shown in figure 3 to this paragraph (b)(2) on the secondary display panel. The icon must be at least 20 mm in diameter. The text

must state the following warnings as shown on figure 3 to this paragraph (b)(2).

Figure 2 to Paragraph (b)(2)

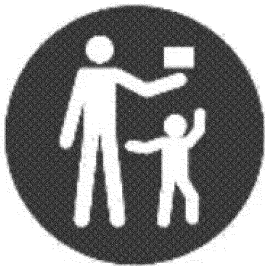


Figure 3 to Paragraph (b)(2)

⚠ WARNING	INGESTION HAZARD • DEATH or serious injury can occur • A swallowed button cell or coin battery can cause Internal Chemical Burns in as little as 2 hours • KEEP new and used batteries OUT OF REACH OF CHILDREN • Seek immediate medical attention if a battery is suspected to be swallowed or inserted inside any part of the body • For treatment information call: [phone number for the National Battery Ingestion Hotline, currently 1-(800) 498-8666].
------------------	--

(3) The following safety-related statements must be addressed on the principal display panel or secondary display panel:

(i) Keep in original package until ready to use.

(ii) Immediately dispose of used batteries and keep away from children. Do NOT dispose of batteries in household trash.

(4) For button cell or coin battery packaging included separately with a

consumer product, only paragraphs (b)(1) and (2) of this section apply.

Alberta E. Mills,
Secretary, Consumer Product Safety Commission.
[FR Doc. 2023–20334 Filed 9–20–23; 8:45 am]
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