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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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Vol. 88, No. 192
Thursday, October 5, 2023

SMALL BUSINESS ADMINISTRATION

[Docket No. SBA–2023–0011]

13 CFR Part 120

Community Advantage Pilot Program

AGENCY: U.S. Small Business Administration.

ACTION: Notification.

SUMMARY: The Small Business Administration (''SBA'' or ''Agency'') is sunsetting the Community Advantage Pilot Program effective October 31, 2023.

DATES: The changes identified in this document take effect October 31, 2023.

ADDRESSES: You may submit comments, identified by SBA docket number SBA–2023–0011, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
- *Mail:* Dianna Seaborn, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Dianna Seaborn, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.*

If you wish to submit confidential business information (''CBI'') as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Dianna Seaborn, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; or send an email to *communityadvantage@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Office of Financial Assistance, Small Business Administration, at (202) 205–3645 or *dianna.seaborn@sba.gov.* The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

1. Background

As part of its efforts to increase the number of SBA-guaranteed 7(a) loans made to small businesses in underserved markets, on February 18, 2011, SBA issued a notice and request for comments introducing the Community Advantage (CA) Pilot Program (76 FR 9626). That notice provided an overview of the CA Pilot Program requirements and, pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, modify, or waive certain regulations in establishing and testing pilot loan initiatives, SBA modified or waived as appropriate certain regulations which otherwise apply to 7(a) loans for the CA Pilot Program.

Subsequent notices made changes to the CA Pilot Program to improve the program experience for participants, improve their ability to deliver capital to underserved markets, and appropriately manage risk to the Agency. These notices were issued on the following dates: February 18, 2011 (76 FR 9626), September 12, 2011 (76 FR 56262), February 8, 2012 (77 FR 6619), November 9, 2012 (77 FR 67433), December 28, 2015 (80 FR 80872), September 12, 2018 (83 FR 46237), and March 2, 2020 (85 FR 12369). In the notice published September 12, 2018 (the ''September 2018 Notice''), SBA extended the pilot program to September 30, 2022, and implemented a temporary moratorium on the acceptance of new Community Advantage Pilot Lender Participation Applications (CA Pilot Lender Applications) effective October 1, 2018, among other changes to the CA Pilot Program. On April 29, 2022, notice 87 FR 25398 announced SBA's intention to extend the CA Pilot Program through September 30, 2024, and to remove the temporary moratorium on the acceptance of new CA Lender Applications.

After evaluating the impact of the CA Pilot Program, on April 12, 2023, SBA published the Final Rule on Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization (SBLC Rule), 88 FR 21890. In the SBLC Rule, SBA lifted the moratorium on licensing new SBLCs and created a new type of SBLC called a Community Advantage Small Business Lending Company (CA SBLC). The SBLC Rule also provided for the grandfathering of current CA Pilot Lenders to be licensed as CA SBLCs with permanent 7(a) lending authority. This means when SBA authorizes a CA SBLC license for a CA Pilot Lender, the CA Pilot Lender will no longer be making 7(a) loans in a temporary pilot program but will instead be making regular 7(a) loans under a CA SBLC license in the 7(a) program.

On May 1, 2023, SBA published Information Notice 5000–846918, Community Advantage Small Business Lending Company Conversion, to announce that effective May 12, 2023, SBA's Office of Credit Risk Management (OCRM) initiated a program to enable current CA Pilot Lenders to become CA SBLCs. This notice also communicated to Lenders that SBA intended to sunset the CA Pilot Program on September 30, 2023.

SBA issued a notice and request for comments on May 22, 2023, 88 FR 32623, SBLC Application Process, to announce that SBA's Office of Capital Access (OCA) opened the application period for new SBLC licenses from June 1, 2023, to July 31, 2023, and shared the process by which interested entities may apply. SBA also announced in this notice that the CA Pilot Program will sunset on September 30, 2023.

2. CA Pilot Program Will Sunset October 31, 2023

As described above, SBA has previously announced on two separate occasions that the CA Pilot Program will sunset on September 30, 2023. The purpose of this notice is to provide a third and final public notice of the CA Pilot Program's termination. Although the previous notices announced the termination of the CA Pilot Program on September 30, 2023, the termination date has been extended and will now be October 31, 2023.

3. Program Evaluation

On April 1, 2022, SBA published a Notice in the **Federal Register** to, among other things, extend the term of the CA Pilot Program. In this notice, SBA stated that it will evaluate the CA Pilot Program to determine whether it should be made permanent, with evaluation criteria including, but not limited to, whether the pilot is achieving its objective(s), impact on job creation and retention, impact on business creation and/or business expansion, whether the costs (including losses) of the pilot are within an acceptable range, and portfolio performance as it relates to other 7(a) programs. SBA's program evaluation, found that the record on both job creation and retention and business creation and expansion, as discussed in this analysis, is unclear. While administrative and subsidy costs to SBA of the pilot program are unknown, indicators, such as hours spent on counseling and the riskiness of CA loans, are consistent with higher costs in both categories. Portfolio measures such as early loan problem rates, default rates, and Small Business Risk Portfolio (SBPS) Scores compare unfavorably with other 7(a) programs.

CA Pilot Program evaluation results:

A. General Community Advantage characteristics.

B. Increased access to credit for small businesses in underserved markets.

C. How have CA Pilot Lenders provided management and technical assistance to CA Pilot Program borrowers.

D. CA Pilot Program and job creation/retention and business creation/retention.

E. Are CA Pilot Program costs in an acceptable range?

F. How does CA Pilot Program portfolio performance relate to other 7(a) programs?

A. General Community Advantage Characteristics

As Table 1 indicates, the number of CA Pilot Lenders that made loans in a fiscal year has ranged from 22 in its first full year to a high of 75 in 2018 and 2019. Unique CA Pilot Lenders in the period of the program's existence number 121. CA Pilot Lenders have made a total of 8,248 loans to businesses totaling over $1.1 billion over the life of the program. Average loan size on an annual basis has ranged from $124,665 in 2014 to $176,937 in 2023, for a mean annual average of $140,728. In percentage terms, the annual averages have ranged from 89 percent of the mean annual average in 2014 to 26 percent above that mean for the first five months of 2023.

TABLE 1—CA LOANS, LENDERS, AND AMOUNTS

Year	Number of CA loans	Number of CA pilot lenders that made a loan	Average amount of CA loans	Volume of CA loans
2011	15	5	142,853	2,142,800
2012	188	22	134,260	25,240,900
2013	273	34	139,926	38,199,800
2014	453	46	124,665	56,473,500
2015	828	64	125,019	103,516,100
2016	988	69	124,671	123,175,000
2017	1,043	74	131,923	137,595,500
2018	1,118	75	140,903	157,529,200
2019	947	75	141,302	133,813,400
2020	538	67	141,663	76,214,700
2021	565	64	146,609	82,834,100
2022	717	63	158,995	113,999,400
2023	575	53	176,937	101,739,000
Total	8,248	.....	.....	1,152,473,400

B. Increased Access

The purpose of the CA Pilot Program is to promote lending by mission-oriented lenders, primarily non-profit financial intermediaries that operate in underserved markets. SBA assessed the performance of this objective by examining the number of new Lenders in the 7(a) market enabled by this pilot program and the amount of CA loans made to borrowers in underserved markets, which includes veteran-owned and women-owned businesses, loans to new businesses, and businesses in rural areas.

Over the period of CA Pilot Program, 121 unique CA Pilot Lenders have made CA loans. Of the CA loans, 30.98 percent were made to small businesses owned by women, 7.84 percent to veteran-owned small businesses, and 36.58 percent to small businesses owned by racial and ethnic minorities, with 11.00 percent of the CA loans going to small businesses with owners of undetermined ethnicity. Further, 12.25 percent of loans went to small businesses located in rural areas, with rural location defined in accordance with 13 CFR 120.10 as a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural. For 7(a) loans other than CA loans, the numbers were 17.56 percent for small businesses owned by women, 18.10 percent for veteran-owned small businesses, 25.48 percent to small businesses owned by racial and ethnic minorities,15.47 percent going to small businesses with owners of undetermined ethnicity, and 18.10 percent for rural small businesses. For underserved borrowers, the picture of access has been mixed. Table 2 shows numbers of loans to women-owned small businesses, veteran-owned small businesses, and minority owned small businesses. The numbers may double-count some categories, such as businesses that qualify for two or all three categories.

A measure of increased access is the geographic distribution of the number of CA loans in Table 2. Two states—California and Texas—with a combined total of just over 20 percent of the US population, account for over 40 percent of the number of CA loans made. This imbalance could indicate an uneven distribution of the lending activity, or it could indicate that there are more

borrowers in the underserved category living in these two states.

TABLE 2—PERCENTAGE OF CA LOANS BY STATE

State	Percent of CA loans
California	30.80
Texas	10.90
Ohio	6.46
New York	5.60
New Jersey	4.27
Wisconsin	4.11
North Carolina	4.00
Arizona	3.95
Florida	3.04
Georgia	2.16
Colorado	2.15
Michigan	1.98
Illinois	1.65
Indiana	1.64
Nevada	1.19
All others	16.11

TABLE 3—CA LOANS TO BORROWERS IN UNDERSERVED MARKETS

Year	Number of CA loans	Borrower was women-owned small businesses	Borrower was veteran-owned small business	Borrower was minority-owned small businesses
2011	15	4	0	2
2012	188	43	9	32
2013	273	77	15	73
2014	453	116	21	151
2015	828	249	61	293
2016	988	317	69	324
2017	1,043	308	92	350
2018	1,118	331	110	418
2019	947	307	88	355
2020	538	153	47	190
2021	565	180	35	233
2022	717	260	58	321
2023	575	210	42	275

As shown in Table 3, the number of veteran-owned small business loans has not risen above 10 percent of the number of CA loans in any year of the pilot program. Women-owned businesses have received between 26 percent and 36 percent of CA loans and minority-owned businesses have received a quarter of the loans since FY 2013 and over 40 percent in the post-pandemic years.

C. Management and Technical Assistance

Data gathered from the addendum to SBA Form 1919, ''Borrower Information Form'', submitted by lenders to SBA, indicate that borrowers have requested management and technical assistance over the period of the pilot program on 2,968 unique CA loans, or 35.98 percent of the loans. The addendum did not separate SBA-provided training from that provided by CA Pilot Lenders. The most common assistance type was Financing/Capital followed by Business Plan assistance. Some loans involved multiple types of assistance and these two categories were both involved in over half of the loans.

TABLE 4—CA ASSISTANCE BY TYPE

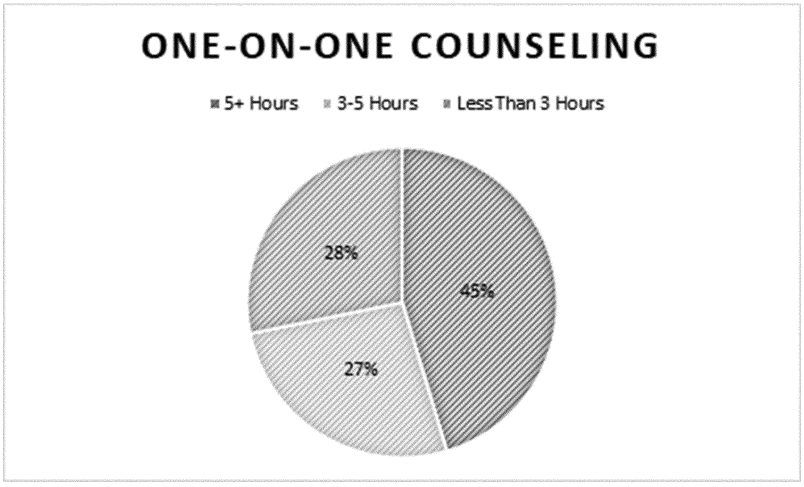
Assistance type	Loan count	Percent of loans receiving assistance type
Financing/Capital	1,860	62.67
Business Plan	1,561	52.59
Start-up Assistance	1,122	37.80
Cash Flow Management	960	32.35
Business Accounting/Budget	828	27.90
Marketing/Sales	696	23.45
Managing Business	694	23.38
Legal Issues	308	10.38
Tax Planning	277	9.33
Customer Relations	265	8.93
Human Resources/Employees	242	8.15
Other	230	7.75
Technology Computers	176	5.93
Buy/Sell Business	165	5.56
eCommerce	152	5.12
Franchising	119	4.01
Government Contracting	113	3.81
International Trade	27	0.91

Modes of delivery included group training, one-on-one counseling, telephone counseling, and web-based tutorials. One-on-one counseling was the most frequently employed mode, with over 80 percent of loans benefiting from this type of counseling and with over 36 percent of loans involving 5 or more hours. A borrower may have used more than one mode of delivery. Telephone Counseling was the second most common mode of delivery.

TABLE 5—MODES OF DELIVERY FOR ASSISTANCE TO CA BORROWERS

Assistance type	Assistance hours	Loan count	Percent of loans receiving assistance mode and hours
Group Training	5+ Hours	429	15.08
Group Training	3–5 Hours	119	4.18
Group Training	Less Than 3 Hours	322	11.32
Total Group Training		870	30.59
One-on-one Counseling	5+ Hours	1,037	36.46
One-on-one Counseling	3–5 Hours	604	21.24
One-on-one Counseling	Less Than 3 Hours	645	22.68
Total One-on-one Counseling		2.286	80.38
Telephone Counseling	5+ Hours	649	22.82
Telephone Counseling	3–5 Hours	529	18.60
Telephone Counseling	Less Than 3 Hours	607	21.34
Total Telephone Counseling		1,785	62.76
Web-based Tutorials	5+ Hours	340	11.95
Web-based Tutorials	3–5 Hours	208	7.31
Web-based Tutorials	Less Than 3 Hours	358	12.59
Total Web-based Tutorials		906	31.86

Figure 1. One-on-one Counseling



D. CA Pilot Program and Job Creation/Retention and Business Creation/Retention

Jobs created plus jobs retained over the life of CA Pilot Program total 59,487. This number represents 0.81 percent of the overall 7(a) portfolio of jobs. CA lending represents 0.39 percent of total 7(a) dollars approved; therefore, CA Pilot Program appears to be performing better than average when considering the number of jobs created and retained relative to dollars in loans. However, comparison with other 7(a) loan delivery methods, which have different equity and other loan criteria and, hence, lower lending risk, as discussed below, is not insightful. In Table 6, jobs created represent 54.87 percent or most of the total jobs in the CA portfolio. For comparison, jobs created represent 33.84 percent of the SBA Express loan jobs, while jobs retained account for the remainder.

TABLE 6—CA PILOT PROGRAM JOBS CREATED AND RETAINED BY YEAR

Year	Jobs created	Jobs retained	Total jobs
2011	61	122	183
2012	763	936	1,649
2013	1,015	1,085	2,100

TABLE 6—CA PILOT PROGRAM JOBS CREATED AND RETAINED BY YEAR—Continued

Year	Jobs created	Jobs retained	Total jobs
2014	1,563	1,473	3,036
2015	3,588	3,106	6,694
2016	3,834	2,861	6,695
2017	4,298	3,632	7,930
2018	4,886	4,437	9,323
2019	3,707	2,736	6,443
2020	1,703	1,878	3,581
2021	2,068	1,334	3,402
2022	2,723	1,631	4,354
2023	2,431	1,666	4,097
Total	32,640	26,897	59,487

Over the term of CA Pilot Program's activities, 57.78 percent of CA loans have been to new businesses, defined as in operations for 2 years or less. The percentage of CA loans going to new businesses has generally increased over the life of the program, as shown in Table 7.

TABLE 7—CA LOANS TO NEW SMALL BUSINESSES

Year	Number of CA loans	Number of CA loans to new businesses	Percentage of CA loans to new businesses
2011	15	7	46.67
2012	188	89	47.34
2013	273	134	49.08
2014	453	239	52.76
2015	828	423	51.09
2016	988	487	49.29
2017	1,043	580	55.61
2018	1,118	658	58.86
2019	947	576	60.82
2020	538	304	56.51
2021	565	394	69.73
2022	717	501	69.87
2023	575	374	65.04
Total	8,248	4,766	57.78

E. CA Pilot Program Costs

SBA does not disaggregate 7(a) administrative or subsidy costs. Therefore, the agency cannot determine if these costs are in an acceptable range. As the following section indicates, loans in the CA Pilot Program have characteristics that are consistent with higher administrative and subsidy costs. Specifically, the early problem loan rate for CA loans has been and remains significantly higher than for other 7(a) loans, including other small loans, and the SBPS Score for CA loans has remained in the high-risk range during the entire existence of the CA Pilot Program.

F. CA Pilot Program Portfolio Performance

A standard metric for loan portfolio performance is the early problem loan rate. This rate is the percentage of the gross amount of loans that have been in place for 36 months or less that have had either a deferred, delinquent (60 or more days past due), liquidated, purchased, or charged off status within 18 months of disbursement. SBA defines the threshold for higher risk loans as 4 percent or higher. For CA loans, the early problem loan rate has been above 4 percent since the first quarter of FY 2014 and has more than doubled to 8 percent in FY 2016. This increase is on pace with CA Pilot Program's expansion (see Table 1). Since FY 2016, the early problem loan rate has not dropped below 7 percent, and the average of annual early problem loan rates over the life of CA Pilot Program through the second quarter of FY 2023 is 8.28 percent. For comparison, the early problem loan rate for the entire 7(a) portfolio over the same period is 2.61 percent and for non-CA Pilot Program 7(a) loans of $250,000 or less, the rate is 3.10 percent. SBA compared CA Pilot Program loans with non-CA Pilot Program 7(a) loans of $250,000 or less because for the duration of the CA Pilot Program (until May 2023), the maximum loan amount for a CA Pilot Program loan was $250,000. Default rates for CA loans have also been higher. Quarterly default rates over a five-year period from March 2013 to March 2018 average 2.07 percent for CA loans, compared to 0.76 percent for the 7(a) portfolio. The averages for non-CA Pilot Program 7(a) loans of $250,000 or less and non-CA Pilot Programs 7(a) loans to underserved markets of $250,000 or less were 1.04 percent and 1.15 percent, respectively.

Another metric for comparison is the Small Business Risk Portfolio Solution (SBPS) Score, which assesses the likelihood of debt delinquency in the next 12 to 24 months. A higher measurement means lower risk of debt delinquency, with a score of below 180 defined as high risk. At the end of Q2 in FY 2023, the SBPS Score for CA loans was 170.94, well below the overall 7(a) score of 203.51 and below the score of 182.27 for non-CA Pilot Program 7(a) loans of $250,000 or less. The SBPS

Score for CA loans has never broken the 180 threshold score over the period of CA Pilot Program. In contrast, the SBPS Score for the 7(a) portfolio has not fallen below 180 for over the period of CA Pilot Program. SBPS Scores have averaged 172.62 for CA loans over the time of the pilot program, 180.2 for 7(a) loans of $250,000 or less, and 191.09 for the 7(a) portfolio over the same period.

4. General Information

Questions regarding the CA Pilot Program may be directed to the local SBA district office. The local SBA district office may be found at *http://www.sba.gov/about-offices-list/2.*

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Isabella Guzman,

Administrator.

[FR Doc. 2023–22185 Filed 10–4–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1056; Project Identifier MCAI–2023–00179–T; Amendment 39–22563; AD 2023–20–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and A350–1041 airplanes. This AD is prompted by reports that excessively deep spot faces on the front engine mounting bolt holes on the wing pylon were detected on the production line. This AD requires a one-time inspection for clash (interference) of the three front engine mounting bolt holes on both the left and right wing pylons, and, depending on findings, accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1056; 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1056.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email *dat.v.le@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 Airbus SAS Model A350–941 and A350–1041 airplanes. The NPRM published in the **Federal Register** on June 1, 2023 (88 FR 35785). The NPRM was prompted by AD 2023–0026, dated January 30, 2023, issued by EASA (EASA AD 2023–0026) (also referred to as the MCAI), which is the Technical Agent for the Member States of the European Union. The MCAI states excessively deep spot faces have been detected on the production line on rib 1 at the level of the front engine mount bolting. This could cause possible integration issues between the pylon and the front engine mount, which could lead to interference damage. This condition, if not detected and corrected, could lead to a reduced fatigue life, which could adversely affect the structural integrity of the airplane.

In the NPRM, the FAA proposed to require a one-time inspection for clash (interference) of the three front engine mounting bolt holes on both the left and right wing pylons, and, depending on findings, accomplishment of applicable corrective actions, as specified in EASA AD 2023–0026. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1056.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received additional comments from Delta Air Lines (Delta). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Another Exception to the MCAI

Delta requested an exception to require only accomplishment of Airbus Service Bulletin A350–71–P011, Revision 01, dated December 20, 2022 (ASB A350–71–P011) and Airbus Service Bulletin A350–71–P015, dated December 20, 2022 (ASB A350–71–P015), ''in accordance'' with steps in those bulletins. Otherwise, the ''in accordance with'' in Airbus Service Bulletin A350–54–P006, Rev 01, dated December 20, 2022 (ASB A350–54–P006), and Airbus Service Bulletin A350–54–P008, dated December 20, 2022 (ASB A350–54–P008) might otherwise be inferred as requiring the entire service bulletin, ASB A350–71–P011 or ASB A350–71–P015, as mandatory.

Delta explained that ASB A350–54–P006 and ASB A350–54–P008 required to be accomplished by EASA AD 2023–0026, use the ''in accordance with'' language to call for implementation of ASB A350–71–P011, and ASB A350–71–P015 and states that ASB A350–71–P011 and ASB A350–71–P015 do not have the paragraph specifying ''Required for compliance'' (RC) actions. Delta states this might infer the entire ASB A350–71–P011 or ASB A350–71–P015 must be accomplished for AD compliance.

The FAA agrees to clarify. The FAA AD refers to EASA AD 2023–0026, which requires following the mandatory (required for compliance) actions in ASB A350–54–P006 and ASB A350–54–P008. These two service bulletins include RC actions that specify that specific actions must be done in

accordance with ASB A350–71–P011 and ASB A350–71–P015. Additionally, ASB A350–71–P011 and ASB A350–71–P015, specify in a note within the accomplishment instructions that ''access and close-up instructions, not comprising return to service tests'' can be omitted or amended to add flexibility to their maintenance operations as long as the technical intent is met. Therefore, the required actions in ASB A350–71–P011 and ASB A350–71–P015 are those that are not specified as access or close-up instructions, and are the actions specifically described by ASB A350–54–P006 and ASB A350–54–P008. As an example, ASB A350–54–P006 specifies to ''Disassemble the retention bracket assy and the 3 pylon bolt assemblies during engine removal'', for which the technical intent of the ASB A350–54–P006 is to comply with the instructions in ASB A350–71–P011 that include these actions.

Request for Clarification if the Test Section in the Bulletins Are Required

Delta requested clarification on whether the Test Section in ASB A350–54–P006, ASB A350–54–P008, ASB A350–71–P011, and ASB A350–71–P015 are required. The instructions do not use ''in accordance with'' or ''refer to'' language, leaving confusion.

The ''Test'' sections of ASB A350–54–P006 and ASB A350–54–P008 require the accomplishment of tests given in other topics which are referenced in ASB A350–71–P011 or ASB A350–71–P015. The ''Test'' sections of ASB A350–71–P011 and ASB A350–71–P015 state ''Do the test procedure as specified in the installation of the demountable power plant (FIN 4000EM1 or 2), refer to MP A350–A–71–00–51–00ZZZ–720Z–A.''

The FAA provides the following clarification. The tests specified in ASB A350–54–P006 and ASB A350–54–P008 are required. The Required for Compliance section of the Accomplishment Instructions states that paragraph 3.E. are RC. Any mandatory language, such as accomplishment of tests, in 3.E. is therefore required. As described by the commenter, since the Test sections of ASB A350–54–P006 and ASB A350–54–P008 specify that the accomplishment of Tests given in other topics are also required, therefore the Test sections in ASB A350–71–P011 and ASB A350–71–P015 are also required. The FAA has not changed this AD as a result of this comment.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0026 specifies procedures for a one-time inspection for clash of the three pylon bolt holes at rib 1 (forward engine attachment on pylon), on both the left and right wing pylons, and applicable corrective actions. Corrective actions include installing the post-mod retention bracket assembly; accomplishing a detailed inspection and a high frequency eddy current (HFEC) inspection or a penetrant inspection on rib 1 for damage (cracks, scratches, or erosion of the protective coating); measuring the spot face depth and pylon thickness and obtaining and following instructions if incorrect spot face depth or pylon thickness at the spot face are found; and repair. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
56 work-hours × $85 per hour = $4,760	$0	$4,760	$147,560

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
10 work-hours × $85 per hour = $850	$10	$860

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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:

2023–20–04 Airbus SAS: Amendment 39–22563; Docket No. FAA–2023–1056; Project Identifier MCAI–2023–00179–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and A350–1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0026, dated January 30, 2023 (EASA AD 2023–0026).

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports that excessively deep spot faces on the front engine mounting bolt holes on the wing pylon were detected on the production line. The FAA is issuing this AD to address potential integration issues between the pylon and the front engine mount, which could lead to interference damage. The unsafe condition, if not addressed, could result in reduced fatigue life, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0026.

(h) Exceptions to EASA AD 2023–0026

(1) Where EASA AD 2023–0026 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2023–0026 refers to ''discrepancies,'' for this AD discrepancies are any clash (interference) between the lockplate support and rib 1 or between the pylon bolt and the engine mount; damage (cracks, scratches, or erosion of the protective coating); and incorrect spot face depth or pylon thickness at the spot face.

(3) Where paragraph (2) of EASA AD 2023–0026 specifies to ''contact Airbus for approved instructions for corrective action and accomplish those instructions accordingly'' if discrepancies are detected; for this AD if any cracking is detected, the cracking must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0026.

(5) Where the service information referenced in EASA AD 2023–0026 specifies to report inspection results or findings, this AD requires submitting information only if damage (cracks) or incorrect spot face depth or pylon thickness at the spot face are found during any inspection required by EASA AD 2023–0026. Operators are required to submit certain information as part of obtaining any corrective actions approved by Airbus SAS's EASA DOA.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email *dat.v.le@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0026, dated January 30, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0026, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website *ad.easa.europa.eu.*

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

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

Issued on September 29, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22085 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1641; Project Identifier MCAI–2023–00598–T; Amendment 39–22557; AD 2023–19–07]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–10–20, which applied to certain ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. AD 2021–10–20 required revising the existing aircraft flight manual (AFM) and applicable corresponding operational procedures to update a systems limitation, limiting dispatch with certain equipment inoperative, performing an operational test of a certain contactor and an electrical test of a certain battery toggle switch, and performing corrective actions if necessary. This AD was prompted by new procedures for modifying the wiring and replacing the battery toggle switch that have been developed that would terminate the AD requirements. This AD continues to require certain actions in AD 2021–10–20, and requires modifying the battery toggle switch wiring and replacing the battery toggle switch, and revises the applicability to include additional airplanes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1641; 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website *ad.easa.europa.eu*.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1641.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email: *shahram.daneshmandi@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–10–20, Amendment 39–21553 (86 FR 26373, May 14, 2021) (AD 2021–10–20). AD 2021–10–20 applied to certain ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72–212A airplanes. AD 2021–10–20 required revising the existing AFM and applicable corresponding operational procedures to update a systems limitation, limiting dispatch with certain equipment inoperative, performing an operational test of a certain contactor and an electrical test of a certain battery toggle switch, and performing corrective actions if necessary. The FAA issued AD 2021–10–20 to address reports of temporary loss of all display units and the integrated electronic standby instrument (IESI), which could result in loss of control of the airplane.

The NPRM published in the **Federal Register** on July 28, 2023 (88 FR 48764). The NPRM was prompted by AD 2023–0078R1, dated April 20, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0078R1) (also referred to as the MCAI). The MCAI states that new modification instructions have been published that would terminate the requirements of EASA Emergency AD 2021–0120–E, dated May 3, 2021 (which prompted FAA AD 2021–10–20). The MCAI also expands the applicability to include Model ATR72–101, –102, –201, –202, –211, and –212 airplanes. The MCAI states that temporary loss of all display units and the IESI, if not corrected, could result in loss of control of the airplane.

In the NPRM, the FAA proposed to continue to require certain actions in AD 2021–10–20, and to require modifying the battery toggle switch wiring and replacing the battery toggle switch, and to revise the applicability to include additional airplanes, as specified in EASA AD 2023–0078R1. The NPRM also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1641.

Changes Since the NPRM Was Issued

In the ''Costs of Compliance'' section, the NPRM stated an incorrect estimated cost of the retained actions from AD 2021–10–20. The FAA has corrected the cost information in this final rule.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

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, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0078R1 specifies procedures for revising the existing AFM to update a systems limitation for the transformer rectifier unit (TRU), limiting dispatch with certain equipment inoperative (which can be done by amending the operator's minimum equipment list (MEL)), performing an operational test of the contactor FIN 1PA for discrepancies (*i.e.,* a lack of power supply to DU 4 or a static inverter 1 INV FAULT not being displayed on 29VU), replacing the battery toggle switch FIN 7PA, modifying the wiring, and performing corrective actions. Corrective actions include replacing the contactor FIN 1PA and restoring wiring. EASA AD 2023–0078R1 also prohibits the installation of affected parts.

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

Costs of Compliance

The FAA estimates that this AD affects 21 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–10–20	3 work-hours × $85 per hour = $255	$0	$255	$5,355
New actions	10 work-hours × $85 per hour = $850	0	850	17,850

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–10–20, Amendment 39–21553 (86 FR 26373, May 14, 2021); and

■ b. Adding the following new Airworthiness Directive:

2023–19–07 ATR—GIE Avions de Transport Régional: Amendment 39–22557; Docket No. FAA–2023–1641; Project Identifier MCAI–2023–00598–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2023.

(b) Affected ADs

This AD replaces AD 2021–10–20, Amendment 39–21553 (86 FR 26373, May 14, 2021) (AD 2021–10–20).

(c) Applicability

This AD applies to all ATR–GIE Avions de Transport Régional Model ATR42–500, and ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 24, Electrical Power.

(e) Unsafe Condition

This AD was prompted by reports of temporary loss of all display units and the integrated electronic standby instrument (IESI). The FAA is issuing this AD to address temporary loss of all display units and the IESI, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0078R1, dated April 20, 2023 (EASA AD 2023–0078R1).

(h) Exceptions to EASA AD 2023–0078R1

(1) Where EASA AD 2023–0078R1 refers to ''05 May 2021 [the effective date of EASA AD 2021–0120–E],'' this AD requires using May 14, 2021 (the effective date of AD 2021–10–20).

(2) Where EASA AD 2023–0078R1 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraphs (1), (2), and (5) of EASA AD 2023–0078R1 specify to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations (see 14 CFR 91.9, 91.505, and 121.137).

(4) Where paragraph (4) of EASA AD 2023–0078R1 specifies actions if ''discrepancies are detected,'' for this AD a ''discrepancy'' is defined as a lack of power supply to DU 4 or a INV FAULT is not triggered.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0078R1.

(i) No Reporting Requirement

Although certain service information referenced in EASA AD 2023–0078R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(k) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0078R1, dated April 20, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0078R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: *ADs@easa.europa.eu*; website: *easa.europa.eu*. You may find this EASA AD on the EASA website: *ad.easa.europa.eu*.

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

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

Issued on September 22, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22083 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0026; Project Identifier MCAI–2022–01210–T; Amendment 39–22443; AD 2023–10–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A319–151N, –153N and –171N airplanes; Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. This AD was prompted by a safety review of the airplane fuel system, which identified that the electrical harness routing of the engine low pressure shut off valve (LPSOV) is not adequately protected against uncontained engine rotor failure (UERF). This AD requires modification of the LPSOV electrical harness routing on either the left-hand engine or the right-hand engine, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0026; 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–0026.

FOR FURTHER INFORMATION CONTACT: Erik Bedillion, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 404–474–5583; email *Erik.Bedillion@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 Airbus SAS Model A319–151N, –153N and –171N airplanes; Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. The NPRM published in the **Federal Register** on January 30, 2023 (88 FR 5817). The NPRM was prompted by AD 2022–0185, dated September 5, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0185) (also referred to as the MCAI). The MCAI states during a safety review of the airplane fuel system, it was identified that the electrical harness routing of the engine LPSOV is not adequately protected against UERF.

In the NPRM, the FAA proposed to require modification of the LPSOV electrical harness routing on either the left-hand engine or the right-hand engine, as specified in EASA AD 2022–0185. The FAA is issuing this AD to address inadequate protection of the LPSOV against UERF. The unsafe condition, if not addressed, could result in loss of engine fuel isolation capability in case of UERF, possibly resulting in an uncontrolled fire.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0026.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0185 specifies procedures for modification of the LPSOV electrical harness routing on either the left-hand engine (for airplanes with LEAP–1A series engines installed) or the right-hand engine (for airplanes with PW1100 series engines installed).

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

Costs of Compliance

The FAA estimates that this AD affects 323 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 13 work-hours × $85 per hour = $1,105	Up to $2,800	Up to $3,905	Up to $1,261,315.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–10–07 Airbus SAS: Amendment 39–22443; Docket No. FAA–2023–0026; Project Identifier MCAI–2022–01210–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0185, dated September 5, 2022 (EASA AD 2022–0185).

(1) Model A319–151N, –153N and –171N airplanes.

(2) Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(3) Model A321–251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a safety review of the airplane fuel system, which identified that the electrical harness routing of the engine low pressure shut off valve (LPSOV) is not adequately protected against uncontained engine rotor failure (UERF). The FAA is issuing this AD to address inadequate protection of the LPSOV against UERF. The unsafe condition, if not addressed, could result in loss of engine fuel isolation capability in case of UERF, possibly resulting in an uncontrolled fire

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0185.

(h) Exceptions to EASA AD 2022–0185

(1) Where EASA AD 2022–0185 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0185.

(3) Where EASA AD 2022–0185 specifies to modify ''in accordance with the instructions of the SB, or contact Airbus for approved instructions whenever necessary,'' this AD requires obtaining instructions before further flight using the procedures specified in paragraph (i)(2) of this AD if any actions cannot be done in accordance with the instructions of the SB.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Erik Bedillion, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 404–474–5583; email *Erik.Bedillion@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0185, dated September 5, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0185, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on September 27, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22080 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1213; Project Identifier MCAI–2022–01615–T; Amendment 39–22561; AD 2023–20–02]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–18–12, which applied to all Airbus SAS Model A330–841 and –941 airplanes. AD 2022–18–12 required installing serviceable engine electronic control (EEC) software or EEC units having the serviceable software, limiting certain parts installation configurations, and prior or concurrent modification of EEC software. This AD was prompted by a determination that engine crystal icing protection could be (temporarily) lost if an erroneous total pressure value is provided by the airplane system, which is addressed through EEC software. This AD continues to require certain actions in AD 2022–18–12 and requires adding new limitations for intermixing of certain EEC software standards and a new operational limitation for engines with certain EEC software installed, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of certain engines under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1213; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1213.

FOR FURTHER INFORMATION CONTACT: Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *timothy.p.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–18–12, Amendment 39–22163 (87 FR 56561, September 15, 2022) (AD 2022–18–12). AD 2022–18–12 applied to all Airbus SAS Model A330–841 and –941 airplanes. 2022–18–12 required installing serviceable EEC software or

EEC units having the serviceable software, limiting certain parts installation configurations, and prior or concurrent modification of EEC software. The FAA issued AD 2022–18–12 to address erroneous electronic centralized airplane monitoring (ECAM) engine oil pressure warnings, which could lead to dual engine in-flight shutdown and result in reduced control of the airplane.

The NPRM published in the **Federal Register** on June 16, 2023 (88 FR 39379). The NPRM was prompted by AD 2022–0253, dated December 19, 2022 (EASA AD 2022–0253) (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 it has been determined that engine crystal icing protection could be (temporarily) lost if an erroneous total pressure value is provided by the airplane system, which, if not corrected, also could lead to dual engine in-flight shutdown and result in reduced control of the airplane. To address this unsafe condition, Rolls-Royce developed new EEC full-authority digital engine control software (EEC standard 5.3) for the affected Trent 7000 engines.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1213.

In the NPRM, the FAA proposed to continue certain actions in AD 2022–18–12. The NPRM also proposed to require adding new limitations for intermixing of certain EEC software standards, and an operational limitation for airplanes having an engine with certain EEC software installed, as specified in EASA AD 2022–0253. The NPRM also proposed to prohibit the installation of certain engines under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

The FAA received additional comments from a commenter, Delta Air Lines (Delta). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Exception to Operational Limitations

Delta requested adding an exception to the operational limitations described in paragraph (7) of EASA AD 2022–0253, which Delta stated prohibits intermixing of software once the airplane has been modified to install EEC SW standard 5.3 on both engines. Delta stated that paragraph (7) of EASA AD 2022–0253 contradicts paragraph (4) of EASA AD 2022–0253, which allows intermixing certain software standards. Delta requested that the exception allow installation of an affected EEC unit, software, or engine if the airplane is operated under certain operational requirements. Delta reasoned that because the software can be installed on individual engines or EECs, an affected EEC unit or engine should be permitted to be installed on a modified airplane (*i.e.,* go from having both engines updated and unaffected to having only one engine updated) as long as the configuration meets intermixing or interchangeability requirements and the 2-year limit specified in paragraph (6) of EASA AD 2022–0253 is not exceeded. Delta pointed out that allowing this would promote operational flexibility if an updated EEC unit or engine needs to be replaced and the only available EEC unit or engine has not been updated to EEC software standard 5.3. Delta added that it made a similar comment during EASA's rulemaking process for EASA AD 2022–0253 and that EASA clarified that paragraph (7) of EASA AD 2022–0253 didn't prohibit re-installing affected EEC software on the airplane. Delta recommended revising the Background section, Related Service Information Under 1 CFR part 51 section, and paragraph (h) of the proposed AD with the exceptions or clarifying changes.

The FAA agrees to clarify. Paragraph (7) of EASA AD 2022–0253 simply provides an acceptable method to comply with the operational limitations in paragraph (6) of EASA AD 2022–0253, which only becomes effective 2 years after the effective date of this AD. Paragraph (7) of EASA AD 2022–0253 does not prohibit intermixing or interchangeability before that date, but instead clarifies that changing the modified airplane configuration to install an affected EEC unit or engine would mean the airplane no longer complies with the operational limitations in paragraph (6) of EASA AD 2022–0253. The FAA has not changed this AD in this regard.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0253 specifies procedures for limitations for intermixing of certain EEC software and an operational limitation for engines with certain EEC software installed. EASA AD 2022–0253 specifies that installation of serviceable EEC software is acceptable for compliance with (terminates) the operational limitation, provided that no affected EEC software, affected EEC unit, or affected engine is subsequently installed on the airplane. EASA AD 2022–0253 also prohibits the installation of engines with certain EEC software. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD, affects 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–18–12 (parts limitations).	1 work-hours × $85 per hour = $85	$0	$85	$1,700

ESTIMATED COSTS FOR REQUIRED ACTIONS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New actions	Up to 25 work-hours × $85 per hour = $2,125.	*0	2,125	42,500

*The FAA has received no definitive data on which to base the cost estimates for the parts specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

■ a. Removing Airworthiness Directive (AD) 2022–18–12, Amendment 39–22163 (87 FR 56561, September 15, 2022); and

■ b. Adding the following new AD:

2023–20–02 Airbus SAS: Amendment 39–22561; Docket No. FAA–2023–1213; Project Identifier MCAI–2022–01615–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2023.

(b) Affected ADs

This AD replaces AD 2022–18–12, Amendment 39–22163 (87 FR 56561, September 15, 2022) (AD 2022–18–12).

(c) Applicability

This AD applies to all Airbus SAS Model A330–841 and –941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 73, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by a determination that engine crystal icing protection could be (temporarily) lost if an erroneous total pressure value is provided by the airplane system and the engine electronic control (EEC) software used to correct the system requires modification. This modification may conflict with EEC software to address erroneous electronic centralized airplane monitoring (ECAM) engine oil pressure warnings. The FAA is issuing this AD to address erroneous total pressure values being provided by the airplane system and any EEC software that should not be intermixed. The unsafe condition, if not addressed, could result in dual engine in-flight shut-down, and subsequent reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0253, dated December 19, 2022 (EASA AD 2022–0253).

(h) Exceptions to EASA AD 2022–0253

(1) Where EASA AD 2022–0253 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0253 refers to ''10 September 2021,'' this AD requires using October 20, 2022 (the effective date of AD 2022–18–12).

(3) Where EASA AD 2022–0253 refers to ''10 September 2023,'' this AD requires using October 20, 2024 (24 months after October 20, 2022, the effective date of AD 2022–18–12).

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0253.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email *timothy.p.dowling@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0253, dated December 19, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0253, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on September 27, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22078 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1501; Project Identifier MCAI–2023–00647–T; Amendment 39–22560; AD 2023–20–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by a report the engine fire extinguishing control and indication system did not illuminate correctly. This AD requires installing a software update to the integrated cockpit control panel (ICCP) remote data concentrator (RDC), as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1501; 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 material incorporated by reference in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1501.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on July 20, 2023 (88 FR 46702). The NPRM was prompted by AD CF–2023–28, dated May 4, 2023, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2023–28) (also referred to as the MCAI). The MCAI states a deficiency in the design of the engine fire extinguishing control and indication system was discovered. After the loss of one hot battery DC bus, the AVAIL legend on BTL 1 and BTL 2 push button annunciators (PBAs) will not illuminate green upon pressing the corresponding ENG FIRE PBA. This condition affects both L ENG FIRE and R ENG FIRE PBAs on the overhead panel. The misleading indication given by the AVAIL legend on BTL 1 and BTL 2 PBAs will affect the crew's assessment of the situation. The crew may hesitate to extinguish an engine fire despite having access to a functional engine fire extinguishing system, or may reselect the FIRE PBA, resulting in loss of the ability to isolate and extinguish the fire.

In the NPRM, the FAA proposed to require installing a software update to the ICCP RDC, as specified in Transport Canada AD CF–2023–28. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1501.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received an additional comment from Delta Air Lines (Delta). The following presents the comment received on the NPRM and the FAA's response.

Request To Clarify Software Installation Requirements

Delta requested that an additional exception be added to paragraph (h) of the proposed AD to clarify that it is acceptable to use a different method of upgrading the software, using Airbus Canada Limited Partnership Service Bulletin BD500–311001, Issue 001, dated March 14, 2023, only as a reference. Delta explained that it has a different policy for installing software that requires the use of a Portable Maintenance Access Terminal (PMAT), model PMAT2000, instead of a USB device.

The FAA partially agrees with the proposed changes. The FAA agrees to clarify that the PMAT method is

permitted, but the FAA will not require the use of a specific model of PMAT. Also, using the service information as a reference must be specified in a note rather than in the paragraph itself. Therefore, a single paragraph (h)(2) has been added to this AD to provide this clarification, and a note has been added regarding the use of Airbus Canada Limited Partnership Service Bulletin BD500–311001, Issue 001, dated March 14, 2023, as a reference.

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, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2023–28 specifies procedures for installing the software update to the ICCP RDC to restore the intended functionality of the PBA green indications. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 76 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 6 work-hours × $85 per hour = Up to $510	Up to $7,500	Up to $8,010	Up to $608,760.

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:

2023–20–01 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22560; Docket No. FAA–2023–1501; Project Identifier MCAI–2023–00647–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2023–28, dated May 4, 2023 (Transport Canada AD CF–2023–28).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report the engine fire extinguishing control and indication system did not illuminate correctly. The FAA is issuing this AD to address the misleading indication given by the AVAIL legend on BTL 1 and BTL 2 push button annunciators (PBAs) that will affect the crew's assessment of the situation. The unsafe condition, if not addressed, could result in the crew hesitating to extinguish an engine fire despite having access to a functional engine fire extinguishing system, or reselecting the FIRE PBA, resulting in loss of the ability to isolate and extinguish the fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–28.

(h) Exceptions to Transport Canada AD CF–2023–28

(1) Where Transport Canada AD CF–2023–28 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2023–28 specifies installing software updates on the integrated cockpit control panel remote data concentrator using a USB-type device, this AD also allows the use of a portable maintenance access terminal (PMAT)-type device.

Note 1 to paragraph (h)(2): When using a PMAT-type device, guidance for upgrading the software can be found in Airbus Canada Limited Partnership Service Bulletin BD500–311001, Issue 001, dated March 14, 2023.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) Required for Compliance (RC): Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

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

(2) For Airbus Canada Limited Partnership service information identified in this AD that is not incorporated by reference, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec J7N 3C6, Canada; telephone 450–476–7676; email *a220_crc@abc.airbus;* website *a220world.airbus.com.* This Airbus Canada Limited Partnership service information is also available at the address specified in paragraph (k)(4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–28, dated May 4, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–28, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website: *tc.canada.ca/en/aviation.*

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

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

Issued on September 25, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22086 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1040; Project Identifier MCAI–2022–01512–T; Amendment 39–22558; AD 2023–19–08]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by a manufacturing quality escape concerning the installation of the Halon metering device on certain cargo fire extinguisher containers. This AD requires the inspection of cargo fire extinguisher container serial numbers and the replacement of the affected containers. This AD would also limit the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2023.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1040; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1040.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on May 12, 2023 (88 FR 30685). The NPRM was prompted by AD CF–2022–66, dated December 8, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that during assembly of the Halon metering device, the discharge head was not fully seated on cargo fire extinguisher containers having certain serial numbers. The threads in the discharge neck were not re-tapped after the discharge disc was welded resulting in an undersized thread, which prevented the Halon metering device from being fully seated. This will result in an increased Halon mass flow rate through the metering device during discharge, which could reduce the duration of the Halon flow.

In the NPRM, the FAA proposed to require the inspection of cargo fire extinguisher container serial numbers and the replacement of the affected containers, and to limit the installation of affected parts. The FAA is issuing this AD to address an increased Halon mass flow rate through the metering device during discharge, which could reduce the duration of the Halon flow. The unsafe condition, if not addressed, when combined with a cargo fire, could lead to a reduction in the fire extinguishing and suppression capabilities of the fire protection system.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1040.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

The FAA received an additional comment from MHI RJ Aviation ULC. The following presents the comment received on the NPRM and the FAA's response.

Request for Latest Service Bulletin Revision

MHI RJ Aviation ULC stated paragraphs (g), (h), and (k)(2)(i) of the proposed AD refer to MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022. The commenter explained that the current revision is at Revision A, dated December 23, 2022, and has been accepted by Transport Canada Continuing Airworthiness. The commenter requested that a credit statement for the initial issue be added to the proposed AD.

The commenter added that paragraph (h) of the proposed AD is referring to Collins Service Bulletin Fire Extinguisher–26–A, dated April 4, 2022. The commenter explained that the current revision is at Revision 1, dated June 16, 2022. The commenter noted that since the latest revision of the Collins service bulletin is also referenced in MHIRJ Service Bulletin 670BA–26–014, Revision A, dated December 23, 2022, Collins Service Bulletin Fire Extinguisher–26–A, Revision 1, dated June 16, 2022, should be referenced in paragraph (h) of the proposed AD.

The FAA partially agrees with the request. The FAA agrees that MHIRJ Service Bulletin 670BA–26–014, Revision A, dated December 23, 2022, as the above-mentioned commentor noted, is the current revision and should be referenced in this AD. The FAA has revised paragraphs (g), (h), and (k)(2)(i) of this AD to add the latest service information revision as an acceptable method of compliance. Accordingly, the FAA disagrees that a credit paragraph is necessary.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022, and Revision A, dated December 23, 2022. This service information specifies procedures for an inspection for the serial numbers of the high rate of discharge (HRD) and low rate of discharge (LRD) cargo fire extinguisher containers and the replacement of affected cargo fire extinguisher containers. These documents are distinct because MHIRJ Service Bulletin 670BA–26–014, Revision A, dated December 23, 2022, added an alternative method to find the serial numbers.

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

Costs of Compliance

The FAA estimates that this AD will affect 597 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 1 work-hour × $85 per hour = $85	$0	Up to $85	Up to $50,745.

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$0	$255

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–19–08 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22558; Docket No. FAA–2023–1040; Project Identifier MCAI–2022–01512–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (type certificate previously held by Bombardier Inc.) airplanes, certificated in any category, identified in paragraphs (c)(1) through (5) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes.

(2) Model CL–600–2C11 (Regional Jet Series 550) airplanes.

(3) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(4) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(5) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a manufacturing quality escape concerning the installation of the Halon metering device on certain cargo fire extinguisher containers. The FAA is issuing this AD to address an increased Halon mass flow rate through the metering device during discharge, which could reduce the duration of the Halon flow. The unsafe condition, if not addressed, when combined with a cargo fire, could lead to a reduction in the fire extinguishing and suppression capabilities of the fire protection system.

(f) Compliance

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

(g) Inspection and Replacement

Within 1,000 flight hours or 6 months, whichever occurs first from the effective date of this AD, inspect the serial numbers of the high rate of discharge (HRD) and low rate of discharge (LRD) cargo fire extinguisher containers in accordance with Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022, or Revision A, dated December 23, 2022. A review of airplane maintenance or equipment records is acceptable in lieu of this inspection if the serial number of the HRD and LRD cargo fire extinguisher containers can be conclusively determined from that review.

(1) If neither of the HRD or the LRD container serial numbers is listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022, or Revision A, dated December 23, 2022, no further work is required by this paragraph.

(2) If the serial numbers of both the HRD and LRD containers are listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022, or Revision A, dated December 23, 2022: Within 4,500 flight hours from the effective date of this AD, replace the HRD and LRD cargo fire extinguisher containers in accordance with Section 2.B. of the Accomplishment Instructions of the MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022, or Revision A, dated December 23, 2022.

(3) If the serial number of either the HRD or the LRD container, but not both, is listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA–26–014, July 28, 2022, or Revision A, dated December 23, 2022: Within 8,800 flight hours from the effective date of this AD, replace the affected HRD or LRD cargo fire extinguisher container in accordance with Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022, or Revision A, dated December 23, 2022.

(h) Parts Installation Limitation

As of the effective date of this AD, it is prohibited to install an HRD or LRD cargo fire extinguisher container with a serial number listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022, or Revision A, dated December 23, 2022, unless the cargo fire extinguisher container is ink-stamped with a circled ''G'' adjacent to the nameplate, signifying the incorporation of Collins Service Bulletin Fire Extinguisher–26–A, dated April 4, 2022, or Revision 1, dated June 16, 2022.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada or MHI RJ Aviation ULC's Transport Canada Design

Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–66, dated December 8, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1040.

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

(i) MHIRJ Service Bulletin 670BA–26–014, dated July 28, 2022.

(ii) MHIRJ Service Bulletin 670BA–26–014, Revision A, dated December 23, 2022.

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*

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

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

Issued on September 22, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22082 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1499; Project Identifier MCAI–2023–00458–T; Amendment 39–22565; AD 2023–20–06]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–202, A330–203, A330–223, A330–243, and A330–841 airplanes. This AD was prompted by a determination that the cold working process was partially completed on a certain circumferential joint. This AD requires modification of the circumferential joint, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1499; 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 material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1499.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov*.

SUPPLEMENTARY INFORMATION:

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 Airbus SAS Model A330–202, A330–203, A330–223, A330–243, and A330–841 airplanes. The NPRM published in the **Federal Register** on July 20, 2023 (88 FR 46697). The NPRM was prompted by AD 2023–0054, dated March 14, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0054) (also referred to as the MCAI). The MCAI states that the cold working process was partially completed on the circumferential joint at frame 58.

In the NPRM, the FAA proposed to require modification of the circumferential joint, as specified in EASA AD 2023–0054. The NPRM also proposed to require contacting the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval for instructions if any discrepancy is found during accomplishment of any inspection that is part of the modification. The FAA is issuing this AD to address a partially completed cold working process on the circumferential joint at frame 58, which could affect the structural integrity of the airplane and result in catastrophic failure.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1499.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA), who supported the NPRM without change, and an individual whose comments are unrelated to the unsafe condition identified in the NPRM.

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, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0054 specifies procedures for modifying the circumferential joint at frame 58. Modification includes accomplishing rotating probe inspections of the fastener holes for cracks, cold working the fastener holes, and measuring the maximum hole diameter. EASA AD 2023–0054 also specifies contacting the manufacturer for instructions if any discrepancy (*i.e.,* any crack or any existing hole diameter that is more than or equal to the minimum starting hole diameter) is found during any inspection.

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

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 86 work-hours × $85 per hour = $7,310	$500	Up to $7,810	Up to $7,810.

The FAA has received no definitive data on which to base the cost estimate for the on-condition actions specified in this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–20–06 Airbus SAS: Amendment 39–22565; Docket No. FAA–2023–1499; Project Identifier MCAI–2023–00458–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A330–202, A330–203, A330–223, A330–243, and A330–841 airplanes, certificated in any category, manufacturer serial numbers 1780, 1782, 1784, 1785, 1805, 1823, 1835, 1845, 1847, 1854, 1859, 1864, 1872, 1877, 1878, 1882, 1888, 1932, 1936, 1964, and 1969.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that the cold working process was partially performed on the circumferential joint at frame 58. The FAA is issuing this AD to address a partially completed cold working process on the circumferential joint at frame 58. The unsafe condition, if not addressed, could affect the structural integrity of the airplane and result in catastrophic failure.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0054, dated March 14, 2023 (EASA AD 2023–0054).

(h) Exceptions to EASA AD 2023–0054

(1) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0054.

(2) Where paragraph (2) of EASA AD 2023–0054 specifies contacting Airbus before further flight for approved instructions if any discrepancy is detected during accomplishment of any inspection that is part of the modification, this AD requires repairing the discrepancy before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Where paragraph (3) of EASA AD 2023–0054 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where Note 2 of EASA AD 2023–0054 specifies Airbus Operators Information Telex (OIT) 999.0086/11 can be used to determine whether an airplane is operated short range (SR) or long range (LR), this AD requires using the following definitions: the term ''short range'' applies to an airplane with an average flight time lower than 1.5 flight hours per flight cycle, and the term ''long range'' applies to an airplane with an average flight time equal to or higher than 1.5 flight hours per flight cycle. For determining the SR and LR airplanes, the average flight time is the

total accumulated flight hours, counted from takeoff to touchdown, divided by the total accumulated flight cycles at the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (h)(2) and (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0054, dated March 14, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0054, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this EASA AD on the EASA website at *ad.easa.europa.eu*.

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

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

Issued on September 28, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22144 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1800; Airspace Docket No. 23–AEA–15]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E surface airspace for Northeast Philadelphia Airport, Philadelphia, PA, by updating the airport's description headers and making editorial changes. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11H, Airspace Designations, Reporting Points, and subsequent amendments online at *www.faa.gov/air_traffic/publications/*. For further information, contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it updates airspace descriptions. This update is an administrative change and does not change the airspace boundaries or operating requirements.

Incorporation by Reference

Class D and Class E airspace are published in paragraphs 5000 and 6002 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 19, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update. FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends the Class D airspace and Class E surface airspace for Northeast Philadelphia Airport, Philadelphia, PA, by:

- Removing the word North from the first line of the header of the Class D airspace description, as it is not needed.
- Removing the city name Philadelphia from the second line of the header of the Class D airspace description, as it is not needed.
- Removing the word North from the first line of the header of the Class E Surface airspace description, as it is not needed.
- Removing the city name Philadelphia from the second line of the header of the Class E Surface airspace description, as it is not needed.
- Replacing the term Notice to Airmen with Notice to Air Missions in Class D airspace and Class E Surface airspace descriptions.

• Replacing the term Airport/Facility Directory with Chart Supplement in the descriptions of Class D airspace and Class E Surface airspace.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 19, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA PA D Philadelphia, PA [Amended]

Northeast Philadelphia Airport, PA
(Lat. 40°04′55″ N, long. 75°00′38″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.6-mile radius of the Northeast Philadelphia Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA PA E2 Philadelphia, PA [Amended]

Northeast Philadelphia Airport, PA
(Lat. 40°04′55″ N, long. 75°00′38″ W)

That airspace extending upward from the surface within a 5.6-mile radius of the Northeast Philadelphia Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in College Park, Georgia, on September 26, 2023.

Lisa E. Burrows,

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

[FR Doc. 2023–22162 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 4, 7, 10, 11, 12, 24, 54, 101, 102, 103, 113, 132, 133, 134, 141, 142, 143, 144, 145, 146, 147, 151, 152, 158, 159, 161, 162, 163, 173, 174, 176, and 181

[USCBP–2016–0075; CBP Dec. 23–12]

RIN 1651–AB02

Regulatory Implementation of the Centers of Excellence and Expertise

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as final, without change, interim amendments made to the U.S. Customs and Border Protection (CBP) regulations by CBP Decision 16–26, as modified by a subsequent technical correction, CBP Decision 19–11. The interim amendments established the Centers of Excellence and Expertise (Centers) as a permanent organizational component of the agency. The interim amendments shifted certain trade functions to the Centers and identified other trade functions jointly carried out by port directors and Center directors. The interim amendments provided broad, centralized decision-making authority to the Centers to enable the Centers to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at ports of entry for identified industries.

DATES: This final rule is effective November 6, 2023.

FOR FURTHER INFORMATION CONTACT: Lori Whitehurst, Office of Field Operations, Cargo and Conveyance Security, Trade Operations Division, at (202) 344–2536, *lori.j.whitehurst@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Summary

A. Purpose of the Centers of Excellence and Expertise (Centers)

Prior to the implementation of the Centers of Excellence and Expertise (Centers), U.S. Customs and Border Protection (CBP) processed imports on a port-by-port basis. Due to CBP's port-by-port trade processing authority, importers claimed disparate processing treatment for similar goods entered at different ports of entry, causing trade disruptions, increased transaction costs, and information lapses. In response, CBP established 10 Centers with broad, centralized decision-making authority to facilitate trade, reduce transaction costs, increase compliance with applicable

import laws, and achieve uniformity of treatment at the ports of entry for identified industry sectors. The Centers focus on nationwide entry summary processing and other trade oversight on a per-importer account basis through a single assigned Center, replacing traditional post-summary processing for each entry at each port of entry. The port directors continue to retain sole authority over the control, movement, and release of cargo.

The Centers are managed from strategic locations around the country, permitting CBP to focus its trade expertise on industry-specific issues and provide tailored support for importers. The Centers and the cities wherein each management office is located are as follows: (1) Agriculture & Prepared Products, Miami, Florida; (2) Apparel, Footwear & Textiles, San Francisco, California; (3) Automotive & Aerospace, Detroit, Michigan; (4) Base Metals, Chicago, Illinois; (5) Consumer Products & Mass Merchandising, Atlanta, Georgia; (6) Electronics, Long Beach, California; (7) Industrial & Manufacturing Materials, Buffalo, New York; (8) Machinery, Laredo, Texas; (9) Petroleum, Natural Gas & Minerals, Houston, Texas; and (10) Pharmaceuticals, Health & Chemicals, New York, New York. For a more detailed discussion of the scope of industries covered by each Center, please refer to the Interim Final Rule discussed in further detail in Sec. I.C below.

B. Test Program Developing the Centers

The Centers concept developed as a result of discussions between CBP and the Commercial Customs Operations Advisory Committee (COAC), which advises the Commissioner of CBP, the Secretary of the Department of Homeland Security (DHS), and the Secretary of the Department of the Treasury (Treasury) on the commercial operations of CBP and related DHS and Treasury functions. *See* Section 109, Public Law 114–125, 130 Stat. 122 (Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)).

In 2012, CBP developed a test to incrementally transition the operational trade functions that traditionally resided with port directors to the Centers. The purpose of the test was to broaden the ability of the Centers to make decisions by waiving certain identified regulations to the extent necessary to provide the Center directors, who manage the Centers, with the authority to make the decisions normally reserved for the port directors. On August 28, 2012, CBP published the first of three General Notices in the **Federal Register** (Announcement of Test Providing Centralized Decision-Making Authority for Four CBP Centers of Excellence and Expertise, 77 FR 52048) announcing a general test (the Centers test) open to participants from industries covered by the Electronics Center, the Pharmaceuticals, Health & Chemicals Center, the Automotive & Aerospace Center, and the Petroleum, Natural Gas & Minerals Center. CBP modified the Centers test in two subsequent **Federal Register** notices published on April 4, 2013 (Modification and Expansion of CBP Centers of Excellence and Expertise Test to Include Six Additional Centers, 78 FR 20345) and March 10, 2014 (Centers of Excellence and Expertise Test; Modifications, 79 FR 13322).

Over the course of the Centers test, the decision-making authority of the Center directors was incrementally broadened. On September 11, 2014, the then-serving Commissioner of CBP, R. Gil Kerlikowske, signed Delegation Order 14–004, which expanded the Center directors' decision-making authority by delegating to the Center directors all functions, authorities, rights, privileges, powers, and duties vested in port directors by law, regulation, or otherwise. The delegation enabled these functions, authorities, rights, privileges, powers, and duties to be exercised concurrently by port directors and Center directors.

C. Interim Final Rule (IFR)

Section 110 of TFTEA required the development and implementation of the Centers. Accordingly, on December 20, 2016, CBP published an interim final rule, CBP Decision (CBP Dec.) 16–26 (Centers IFR), in the **Federal Register** (Regulatory Implementation of the Centers of Excellence and Expertise, 81 FR 92978), amending title 19 of the Code of Federal Regulations (19 CFR) and establishing the Centers as a permanent organizational component of the agency. Furthering the Centers' trade enhancement goals, the Centers IFR implemented the Centers' broad decision-making authority by amending parts of title 19 of the CFR to: (1) define the Centers and the Center directors; (2) modify the definition of the term ''port director'' in order to distinguish the port directors' functions from the Center directors' functions; (3) identify the Center management offices; (4) explain the process by which importers are assigned to the Centers based on the predominant Harmonized Tariff Schedule of the United States (HTSUS) tariff classification of the importer's goods; (5) establish an appeals process that allows an importer to contest its assignment to a specific Center; (6) identify the regulatory functions that have been transitioned from the port directors to the Center directors and those functions that the port directors and the Center directors carry out jointly; (7) clarify that certain payments and documents may continue to be submitted at the ports of entry and electronically; and (8) provide a list of industries covered by each of the Centers. A limited number of responsibilities and authorities that had been provided to the Center directors under the Centers test were not transitioned to the Centers as part of the interim amendments.[1]

D. Technical Correction

On September 5, 2019, CBP published a technical correction, CBP Dec. 19–11, (Technical Correction), in the **Federal Register** (84 FR 46676) to correct discrepancies in 19 CFR 12.73(j) and 141.113(b) to properly reflect the authority of the Center directors. Following the publication of an unrelated final rule in the **Federal Register** on December 27, 2016 (81 FR 94974), § 12.73(j) contained an inconsistency that was corrected to reflect that both the Center directors and port directors have the authority to collect certain U.S. Environmental Protection Agency (EPA) declarations, and the Center directors, rather than the port directors, have the authority to extend the submission deadline for such EPA declarations. Additionally, an inadvertent omission in the amendatory instructions to § 141.113(b) was corrected to replace the word ''port director'' with the word ''Center director.''

II. Discussion of Comments

A. Overview

Pursuant to the agency management or personnel exemption in 5 U.S.C. 553(a)(2), the agency organization, procedure, and practice exemption in 5 U.S.C. 553(b)(A), and the good cause exemption in 5 U.S.C. 553(b)(B), the interim regulatory amendments were promulgated without prior public notice and comment procedures. However, the Centers IFR provided for the submission of public comments that would be considered before adopting the interim amendments as a final rule. The prescribed 30-day public comment period closed on January 19, 2017.

[1] *See* 81 FR 92978 (December 20, 2016) for a detailed list of responsibilities and authorities that had been previously provided to the Center directors as part of the Centers test but were not transitioned to the Centers as part of the interim amendments.

One of the comments that CBP received during the initial 30-day public comment period requested a 60-day extension of the 30-day public comment period. In response to the comment and to allow for as much public participation as possible in the formulation of the final rule, on January 27, 2017, CBP extended the initial 30-day public comment period for another 60 days until March 20, 2017 (82 FR 8588). During the public comment period, CBP received eight comments, six of which were within the scope of the Centers IFR.[2] CBP has carefully considered all comments submitted in response to the Centers IFR.

All comments were supportive of the implementation of the Centers as a permanent organizational component of the agency. Nonetheless, several commenters had concerns or questions about specific aspects of the Centers' organization and operations. A description of these comments, together with CBP's analysis, is set forth below.

B. Responses to Comments

Comment: Two commenters expressed general approval of the Centers, with one commenter, a law firm, stating that the Centers constitute a vast improvement over the disjointed and inconsistent treatment of entries that resulted from the administration of imports on a port-by-port basis, reflecting the goals of increased administrative efficiencies noted in the Centers IFR cost-benefit analysis. The commenter especially highlighted its positive experience in working with various Centers.

Response: The Centers represent a new approach to trade processing that is more in line with the trade community's current business practices, and CBP is pleased to know that the trade community shares the view that the Centers enhance compliance, collaboration, and efficiency.

Comment: One commenter expressed concerns regarding coordination between the Centers and ports, as well as the procedures pertaining to the assignment of importers to the Centers. According to the commenter, the lack of procedures and policies that govern how the Centers and ports coordinate with each other creates difficulties in determining which component serves as the primary decision-maker and/or point of contact regarding these matters. While the commenter acknowledged that the assignment of importers to the Centers may provide clarification as to which component serves as the primary decision-maker and/or point of contact, the commenter also raised additional concerns and questions regarding the assignment of importers to the Centers.

First, the commenter noted that the assignment of importers to the Centers on an account basis rather than based on the predominant commodities of each entry constitutes a reversal of a policy that CBP announced in 2016 for entries requiring review, such that an importer could end up dealing with multiple Centers, for different entries. Second, the commenter inquired whether CBP is prepared to properly allocate importers to the Centers based on their account activity and business model. Specifically, the commenter inquired about the process by which CBP assigns importers with minimal account activity throughout the year to the Centers, and how the Centers coordinate with each other when an importer was assigned to one Center on an account level but enters a small number of shipments with predominant HTSUS tariff classifications covered by a different Center.

Response: CBP disagrees with the commenter's assertion that a lack of coordination in the concurrent decision-making authority of port directors and Center directors creates uncertainty as to which component serves as the point of contact and primary decision-maker. Either the amended regulations or the corresponding CBP Form specifies which component should be contacted regarding these matters. In order to better enable the Centers to accomplish their trade mission (that is, to strategically enforce commercial import laws while also facilitating the flow of legitimate trade), the regulatory, permanent implementation of the Centers required CBP to make minor adjustments to the Centers' authorities and responsibilities, and CBP's internal policies and procedures. For example, in order to achieve full end-to-end processing of import activity, CBP updated its internal policies and procedures to provide for the required level of coordination and collaboration between the Centers and the ports, including creating instances of concurrent decision-making authority between the Center directors and port directors during the Centers implementation process. Additionally, the Centers IFR included minor modifications to the Centers' responsibilities and authorities, and the process by which importers are assigned to the Centers. Therefore, CBP recognizes that the regulatory implementation of the Centers as a permanent organizational component of the agency has required an adjustment period during which the trade community must become acquainted with the modified processes, including which component serves as the primary decision-maker for certain trade functions and the process by which importers are assigned to the Centers. CBP appreciates the comment as it provided CBP with an opportunity to guide the trade community through the adjustment process.

The Centers centralize and consolidate post-release activities of importers on an account basis. Generally, each importer is assigned to a Center based on the predominant HTSUS tariff classification of the importer's imported goods. Once an importer has been assigned to a specific Center, that Center will process all of the importer's entry summaries, regardless of the predominant HTSUS tariff classification of a specific entry. For example, an importer whose imports are 75 percent footwear and 25 percent miscellaneous items will be assigned to the Center for Apparel, Footwear and Textiles. Once the importer has been assigned to the Center for Apparel, Footwear and Textiles, all of the importer's activities will be processed by that Center, regardless of whether the predominant HTSUS tariff classification of a specific entry relates to a different industry sector.

The processing of trade activity on an account basis does not prevent the Centers from providing tailored support to importers and handling industry-specific issues. When it is necessary to leverage another Center's expertise, the Centers coordinate with each other, and CBP has streamlined the coordination process over time. However, over time, the Centers have developed a more proficient level of knowledge of their accounts and import activities, which has enabled the Centers to administer trade activity more independently.

In order to ensure that an importer is assigned to the Center that corresponds with the importer's business model, the assignment process differs slightly in a limited number of circumstances. For example, CBP may assign an importer to a Center other than the Center reflecting the predominant HTSUS tariff classification of the importer's goods, if such deviation from the regular assignment process is supported by information such as: (1) the importer's associated business practice within an industry; (2) the intended use of the predominant number of goods imported;

[2] Eight public comments were submitted to the docket for the Centers IFR; however, two comments were not posted to *www.regulations.gov* as they were deemed out of scope. Neither of the two comments addressed the Centers and both comments were directed to other agencies regarding other programs. Accordingly, these two comments are not considered in this document.

and (3) the high relative value of the imported goods. Additionally, since the business practices of brokers do not align within a particular industry sector, the import activities of brokers acting as Importers of Record (IORs) are processed on an entry-by-entry basis, meaning that each entry summary will be assigned to a specific Center based on the entry summary's predominant HTSUS tariff classification. Import activities of importers with minimal account activity throughout the year who have not yet been assigned to a specific Center are processed similarly. Furthermore, importers are permitted to appeal the assignment to a Center at any time and can seek re-assignment to a different Center. *See* 19 CFR 101.10(c). As a result, CBP finds that the current assignment process properly allocates importers to Centers based on the importers' account activity and business models.

Comment: One commenter requested that CBP assign entries filed by express courier brokers to the Centers on the basis of the overall post-release account activity of the ship-to party, or in the alternative, create a separate Center for express courier brokers. According to the commenter, the exclusion of express courier brokers from participation in the Centers model is anathema to the purpose of the Centers—that is, to focus CBP's trade expertise on industry-specific issues and tailored support for importers. The commenter explained that, although express courier brokers serve as IORs on entries, the predominant tariff classification of the entries is not driven by the express courier broker's business model but the business model of the ship-to party (formerly known as consignee), who serves as the party causing the importation and often serves as an IOR itself on other (unrelated) entries. Accordingly, the commenter requested that CBP assign entries filed by express courier brokers to the Centers on the basis of the overall post-release account activity of the ship-to party, instead of the post-release account activity of the importer of record (that is, the express courier broker), or in the alternative, create a separate Center for express courier brokers.

Response: CBP appreciates the comment as it underscores the importance of the roles of filers and brokers in the importation process and agrees that express courier brokers do not squarely fit within one of the ten defined industry sectors because their business practices cross all industry sectors. Nonetheless, CBP finds that the Centers are well equipped to handle the activities of express courier brokers as they fit within the trade community's overall business practices.

The Centers process trade activity from a national perspective, at the IOR and ultimate consignee level, and, therefore, have full visibility into the trade community's normal business practices, including the activities of express courier brokers. Like the trade activities of other brokers acting as IORs, the import activities of express courier brokers are also processed on an entry-by-entry basis, meaning that each entry summary will be assigned to a specific Center based on the entry summary's predominant HTSUS tariff classification. As such, it is CBP's position that the Centers are well equipped to handle the activities of express courier brokers because the Centers' current operating model accounts for the fact that express courier brokers enter merchandise across all industry sectors.

Express courier brokers are not excluded from participation in the Centers model, as the commenter suggested. To the contrary, the Centers have gained experience on industry-specific issues, which has led to an improved level of service to express courier brokers. This includes the creation of cross-educational opportunities that will serve to inform express courier brokers on compliance issues and CBP on the trade community's current business practices, including the express courier brokers' processes. CBP is committed to ensuring that the business processes of all members of the trade community are accounted for in the Centers' operational approach and continues to strengthen relationships in a coordinated effort to secure the U.S. economy through lawful trade and travel.

Comment: One commenter commended CBP on the creation of the Centers but suggested several minor technical revisions to the language of the CBP regulations pertaining to the Centers (Centers regulations). For example, the commenter noted that several provisions of the Centers regulations provide that certain documents or payments may be filed with CBP, ''either at the port of entry or electronically.'' The commenter explained that the phrase ''either at the port of entry or electronically'' implies that the Centers only accept electronic submissions of these types of documents or payments. The commenter also noted that, in the context of paragraph (b) of section 174.12, the phrase conflicts with the regulatory language in paragraph (d), which permits but does not require electronic filing.

Additionally, the commenter pointed out that the fact that protests filed with the Centers can cover entries filed at multiple ports of entry constitutes a major change to CBP's protest procedures, and as such, should be highlighted in the regulatory text. Therefore, the commenter requested that CBP amend paragraph (d) of section 174.12 by adding the following sentence: ''A protest filed with the Center director may include entries filed at multiple ports of entry.''

Response: CBP understands that the implementation of the Centers led to an initial adjustment period during which members of the trade community had to become acquainted with the Centers' processes, including the submission process for documents and payments. While CBP believes that any uncertainty as to the submission process was resolved as part of the initial adjustment period, CBP appreciates the comment as it provides CBP with an opportunity to clear up any potentially remaining uncertainty.

The use of the phrase ''either at the port of entry or electronically'' does not imply that the Centers only accept electronic submissions of certain documents and payments, as suggested by the commenter. As part of the transition of certain trade functions from the ports of entry to the Centers, the Centers IFR shifted certain staff positions from the port directors' chain of command to the Center directors' chain of command. While the reallocated personnel now report to a Center director rather than a port director, the reallocated personnel continue to handle the same trade functions. In order to remain accessible to the trade community and to assist with enforcement and compliance issues as they arise, the reallocated personnel remain in their previous locations—primarily, at the ports of entry. The realignment was merely virtual. Thus, in the phrase ''either at the port of entry or electronically,'' the use of the preposition ''*at*'' (rather than ''with'') establishes that hard copies of the documents or payments can be filed *at* the ports of entry (*with* staff of either the port of entry or the Centers). Like electronic submissions, the submissions will then be forwarded to and processed by the Center assigned to that particular submission.

Additionally, CBP disagrees that it is necessary to amend paragraph (d) of section 174.12 to further clarify that a single protest can now pertain to multiple entries filed at multiple ports of entry. CBP finds that the regulatory

language in paragraph (b) of section 174.13 sufficiently establishes that a single protest can now pertain to multiple entries filed at multiple ports of entry.

III. Conclusion

Based on the analysis of the comments and further consideration, CBP adopts as final the interim rule (Centers IFR), CBP Dec. 16–26, published in the **Federal Register** (81 FR 92978) on December 20, 2016, as modified by the Technical Correction, CBP Dec. 19–11, published in the **Federal Register** (84 FR 46676) on September 5, 2019, without changes.

IV. Statutory and Regulatory Requirements

A. Executive Orders 13563 and 12866

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

1. Purpose of the Rule

Prior to the launch of the Centers test, CBP port directors overseeing imports were solely responsible for facilitating lawful importation; protecting U.S. revenue by assessing and collecting customs duties, taxes, and fees; and detecting, interdicting, and investigating illegal international trafficking in arms, munitions, counterfeit goods, currency, and acts of terrorism at their U.S. port of entry. Before the implementation of the Centers, when a shipment reached the United States, the IOR (*i.e.,* the owner, purchaser, or licensed customs broker designated by the owner, purchaser, or consignee) would file entry documents and a bond for the imported goods with the director of the port where the merchandise was entered. If necessary, CBP staff working under the port director would then hold or examine the shipment or validate the entry documents to ensure the merchandise's safety, security, and customs compliance with U.S. importing guidelines, or its general admissibility. The port director would release the shipment from CBP's custody if no legal or regulatory violations occurred, allowing post-cargo release (hereafter, post-release) processing to commence. Within 10 working days of the merchandise's entry at a designated customhouse, CBP would require the importer to file entry summary documentation consisting of the entry package returned to the importer, broker, or authorized agent by CBP at the time the merchandise was released and an entry summary (CBP Form 7501), and to deposit any estimated duties on the shipment. In some cases, CBP would send a formal request for other invoices and documents (via CBP Form 28: Request for Information) to the importer to assess duties, collect statistics, or determine that import requirements have been satisfied prior to processing the entry summary. Before completing the importation process, CBP Import Specialists and Entry Specialists working under the port director would review and process all entry summary and related documentation; classify and appraise the merchandise; collect final duties, taxes, and fees on the goods entered; and liquidate entry summaries. If necessary, the CBP trade personnel would also review and process protests, perform importer interviews, and initiate monetary trade penalties and liquidated damages cases.

Due to CBP's port-by-port trade processing authority and scope, elements of the cargo entry and release process, such as holds, exams, document submission requirements, and final determinations regarding admissibility, varied widely among ports of entry and resulted in the length of the process varying greatly as well. Importers often claimed to receive disparate processing treatment for similar goods entered at different ports of entry, causing trade disruptions, increased transaction costs, and information lapses for not only the importer but also CBP. With an intent to facilitate trade, provide consistent import processing treatment, reduce transaction costs, and strengthen the agency's trade knowledge and enforcement posture, CBP began testing an organizational concept in 2011 that grouped agency trade expertise and operational responsibilities by industry and related import accounts into designated Centers.

Since the commencement of the Centers test, the Centers have successfully met their trade enhancement goals. Based on the Centers test's success, CBP published the Centers IFR in the **Federal Register** (81 FR 92978) on December 20, 2016, which discontinued the Centers test and established the Centers as permanent organizational components of CBP through regulatory amendments. The Centers regulations were later modified by the Technical Correction published in the **Federal Register** (84 FR 46676) on September 5, 2019.

This rule adopts the Centers IFR, as modified by the Technical Correction, as a final rule, without changes, and finalizes the transition of certain trade enforcement responsibilities and the majority of post-release trade functions from the purview of port directors to Center directors.[3] Port directors continue to retain singular authority over matters pertaining to the control, movement, examination, and release of cargo. The Centers focus on nationwide entry summary processing and other trade oversight on a per-importer account basis through virtual means, which replaces traditional post-release import processing *per* entry at *each* port of entry with processing by a single assigned Center according to the importer account. To conduct such national, industry-focused processing, CBP has permanently staffed the Centers with personnel specializing in trade matters through an internal realignment, which imposed no costs on CBP. Centers personnel have generally remained at their previous locations, primarily at ports of entry, to stay accessible to the trade community and continue to assist with enforcement and compliance issues that arise at ports of entry with the physical importation of cargo. CBP remotely manages Centers employees through multidisciplinary teams located across the nation, thereby enabling CBP to extend the Centers' hours of service to trade members, maintain a high level of industry expertise in major port cities, and staff the Centers with industry experts from across the country.

2. Costs and Benefits of Rule

Since CBP received no comments critical of the economic impact analysis on the interim final rule, and one positive comment generally reflecting the analysis, and because CBP is not

[3] *See* 81 FR 92978, 92983–93003 (December 20, 2016) and 84 FR 46676, 46677 (September 5, 2019), for a detailed list of trade function transitions.

making any changes in the final rule, CBP largely adopts the Centers IFR's economic analysis, with updated data. CBP also made minor changes to the analysis to better reflect how the rule was implemented in practice. In this regulatory impact analysis, CBP discusses the costs and benefits that CBP and trade members experience with the regulatory implementation of the Centers in qualitative and, when possible, quantitative or monetary terms. CBP incurred sunk costs related to travel, equipment, and supplies and materials, as well as some other costs during the Centers test phase, related to establishing and transitioning to Centers, totaling approximately $760,000 from 2012 to February of 2014. The document ''Program Assessment of the Centers of Excellence and Expertise,'' available in the docket, assesses the impacts of the Centers test phase in more detail. As in the analysis for the interim final rule, we do not include these costs as costs of the rule. We report them here to give the reader a more complete understanding of the costs for the entire lifecycle of the Centers, including the test period.

For the purpose of this analysis, the complete Centers rulemaking effort, including the Regulatory Implementation of the Centers of Excellence and Expertise interim final rule, the Technical Correction to Centers of Excellence and Expertise Regulations, and this final rule, are collectively referred to as ''the Centers rule'' or ''this rule.''

a. Costs

This rule introduces minimal costs to CBP and the trade community because it largely meets its objectives through low- to no-cost internal organization changes. The transition of post-release import processing and trade-related responsibilities from ports of entry to the Centers neither affects the duties, taxes, and fees payment and entry summary submission processes for importers, nor does it adversely affect other post-release activities (*e.g.,* processing duty refund claims, reviewing protests). Even with the Centers, importers may continue to file payments and paper entry summary documentation with CBP either at the port of entry or electronically. All payments from the trade community, whether submitted to a Center, at a port of entry, or electronically, continue to go directly to CBP's Office of Finance. If trade enforcement or post-release processing issues emerge, CBP continues to maintain its formal importer notification and remedy processes. Upholding these administrative processes generates no related costs to the agency.

At the time the Centers IFR was published, CBP anticipated that if an importer or broker submitted paper entry summary documentation at a port of entry without an appropriate Center representative on site, CBP staff at the port would reroute the documents internally by electronic means to the Center assigned to manage the importer's account. In practice, electronic rerouting has been found to be unnecessary due to the implementation of the Automated Commercial Environment (ACE); therefore, CBP incurs no cost for document rerouting as predicted in the Centers IFR.[4]

CBP does experience costs from processing (*i.e.,* reviewing and making a determination on) Center assignment appeals. Generally, CBP assigns each importer to a specific Center based on the HTSUS tariff classification and industry sector corresponding to the predominant number of goods the importer imports.[5] An importer that is displeased with its Center assignment may appeal the assignment at any time by submitting a written appeal to CBP by mail or email. Appeals must include the following information: (1) current Center assignment; (2) preferred Center assignment; (3) all affected IOR numbers and associated bond numbers; (4) written justification for the change in Center assignment; and (5) import data, as described in the ''Finalization of the Centers of Excellence and Expertise Test'' section of the Centers IFR. CBP data shows that importers file significantly fewer Center assignment appeals than what was predicted in the Centers IFR. CBP receives two Center assignment appeals each year compared to the 60 that was predicted in the Centers IFR.[6] Each appeal takes 30 minutes (0.5 hours), on average, for CBP Headquarters staff to process, which is half has long as predicted in the Centers IFR.[7] CBP generally notifies trade members of its Center appeal decisions by electronic means, thus imposing no additional cost on the agency.[8] Based on the number of Center appeals submitted annually and CBP's time burden to manage each appeal, CBP sustains an annual cost of $96.61 from the Centers rule's Center assignment appeals process.[9]

As outlined in this final rule, the responsibilities of the trade community remain largely unchanged with the Centers' regulatory implementation. Importers may continue to file cargo release documentation and payments where their merchandise is entered. Importers and brokers who file electronically can continue to use CBP's automated systems, such as the Automated Broker Interface, to submit required import data and payments to CBP. Meanwhile, CBP continues to maintain a consistent formal notification and remedy process regarding post-release and other trade-related issues with the Centers' establishment. Trade members only incur costs from this rule when appealing a Center assignment.

Importers may choose to appeal their Center assignment for a number of reasons, including the expectation of better service or product knowledge at another Center. As previously discussed, if an importer chooses to appeal its Center assignment, it must submit a written appeal to CBP by mail or email that includes information about its current and preferred Center assignments (*see* ''Finalization of the Centers of Excellence and Expertise Test'' section of the Centers IFR for specific appeal requirements). CBP estimates that each appeal takes 45 minutes (0.75 hours) for an importer to complete.[10] The opportunity cost estimate is equal to the median hourly wage of an importer ($34.81) multiplied by the hourly time burden for an importer to complete and submit a Center assignment appeal (0.75 hour), and then rounded.[11] This results in an

[4] Source: CBP's Office of Field Operations, February 18, 2020.

[5] The list of HTSUS numbers that will be used by CBP for the importer's placement in a Center is the same list of HTSUS numbers that is referenced in the definition for Centers (*see* § 101.1). Factors that may cause CBP to place an importer in a Center not based on the HTSUS tariff classification of the predominant number of goods imported include the importer's associated business practices within an industry, the intended use of the predominant number of goods imported, or the high relative value of goods imported.

[6] Source: CBP's Office of Field Operations, February 18, 2020.

[7] Source: CBP's Office of Field Operations, February 18, 2020.

[8] Source: CBP's Office of Field Operations, January 15, 2015.

[9] This cost is monetized by multiplying one hour by the fully-loaded wage of a CBP Officer ($96.61). CBP bases this wage on the FY 2022 salary and benefits of the national average of CBP Agriculture Specialist positions, which is equal to a GS–12, Step 5. Source: CBP's Office of Finance, June 27, 2022.

[10] Source: CBP's Office of Field Operations, February 18, 2020.

[11] CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2021 median hourly wage rate for Cargo and Freight Agents ($22.55), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2021 total compensation to wages and salaries for Office and Administrative Support occupations (1.4819), the assumed occupational group for importers, to account for non-salary

Continued

opportunity cost of $26.11 for a single appeal. Due to the relative affordability of submitting a Center assignment appeal via email rather than mail, CBP believes that the vast majority of importers file appeals electronically. Therefore, CBP does not consider the printing or mailing costs for an importer to submit a Center assignment appeal in this analysis. By applying the cost for importers to complete and submit a Center assignment appeal to the expected number of Center assignment appeals filed annually, CBP finds that this rule's appeals process generates $52.22 in yearly costs to the trade community.[12] This cost is lower than the Centers IFR estimated annual cost to the trade community of $1,803 largely due to the difference in projected (60) and actual (2) Center appeals received.

Certain trade members, particularly CBP-accredited laboratories and CBP-approved gaugers, may incur added costs with this rule's amendments to their obligations outlined in 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6).[13] As amended, CBP requires CBP-accredited laboratories to notify an additional CBP representative, the Center director, of ''any circumstance which might affect the accuracy of work performed as an accredited laboratory, . . . their consequences, and any corrective action taken or that needs to be taken'' and ''of any attempt to impede, influence, or coerce laboratory personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status.'' [14] Similarly, CBP requires CBP-approved gaugers to notify an additional CBP representative, the Center director, of ''any circumstance which might affect the accuracy of work performed as an approved gauger, . . . their consequences, and any corrective action taken or that needs to be taken'' and ''of any attempt to impede, influence, or coerce gauger personnel in the performance of their duties, or of any decision to terminate gauger operations or approval status.'' [15] Under previous, pre-Centers regulations, CBP mandated CBP-accredited laboratories and CBP-approved gaugers to contact the port director and Executive Director, Laboratories and Scientific Services, on the matters described above. Given that CBP did not receive any notifications previously required under 19 CFR 151.12(c)(5) and (6) and 19 CFR 151.13(b)(5) and (6) in the past 20 years prior, CBP assumes that this rule's additional CBP notification step for CBP-accredited laboratories and CBP-approved gaugers will continue to not introduce any costs to these parties.[16]

In all, the Centers rule introduces annual costs of $96.61 to CBP and $52.22 to trade members for a total of $148.83.

b. Benefits

The Centers rule produces valuable benefits to CBP and the trade community. This section of the analysis largely discusses the benefits of the rule qualitatively due to quantitative data limitations. Based on the success of the Centers test and public comments on the Centers IFR, CBP believes that, as permanent organizational components, the Centers continue to provide uniform post-release processing and trade-related decision-making, strengthen critical agency knowledge of industry practices and products, heighten CBP's trade enforcement skills, and improve trade communication. CBP also believes this occurs on a much grander scale than observed during the test phase because CBP has since assigned all current eligible importers to a Center. CBP continues to assign new importers to Centers, if eligible, once the Center alignment can be determined based on their import history.

The Centers allow CBP to conduct uniform entry summary processing and trade-related decision-making nationwide on an industry-specific, importer account basis by transitioning the post-release processing of an importer's goods from a transactional level at each port of entry to one assigned Center. Public comments support this assessment. One comment from a law firm explained that their clients have seen benefits, including increased efficiency, consistency, and more accurate treatment in their interactions with Centers compared to the ''disjointed and inconsistent treatment that resulted from having to deal with individual Ports of Entry.''

As permanent CBP components, the Centers require fewer information requests and conduct better informed trade compliance actions than in the pre-Centers environment, leading to time and cost savings to CBP and trade members. Prior to the implementation of the Centers, when an importer entered similar merchandise at different U.S. ports of entry that required supplemental information for entry summary processing, CBP personnel at each port of entry generally submitted a CBP Form 28: Request for Information to the importer. In that case, the importer responded to each request, even if the responses were identical, and CBP personnel at each port of entry reviewed the duplicative information received from the importer. With the Centers, the importer receives only one CBP Form 28 for the merchandise's entry summary processing, requiring CBP personnel to review the importer's supplemental information only once. For each avoidance of a CBP Form 28, CBP saves 10 minutes (0.17 hours) of time in issuing the request and reviewing the requested information.[17] Importers save an estimated 120 minutes (2.0 hours) in preparation time for each avoided CBP Form 28 response [18] and $69.62 in averted opportunity costs.[19] Internal CBP data shows that there has been more than a 61 percent (14,958 submissions) decrease in CBP Form 28

employee benefits. This figure is in 2021 U.S. dollars and CBP assumes an annual growth rate of 4.15 percent based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2021 National Occupational Employment and Wage Estimates United States.'' Updated March 31, 2022. Available at *https://www.bls.gov/oes/current/oes_nat.htm.* Accessed May 25, 2022. The total compensation to wages and salaries ratio is equal to the calculated average of the 2021 quarterly estimates (shown under Q01, Q02, Q03, Q04) of the total compensation cost per hour worked for Office and Administrative Support occupations ($29.6125) divided by the calculated average of the 2021 quarterly estimates (shown under Q01, Q02, Q03, Q04) of wages and salaries cost per hour worked for the same occupation category ($19.9825). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. ''ECEC Civilian Workers—2004 to Present.'' March 2022. Available at *https://www.bls.gov/web/ecec.supp.toc.htm.* Accessed May 25, 2022.

[12] The annual opportunity cost to the trade industry is equal to the median hourly wage of an importer ($34.81) multiplied by the hourly time burden for an importer to complete and submit a Center assignment appeal (0.75 hours), multiplied by the number of Center assignment appeals (2), and then rounded.

[13] The text of 19 CFR 151.12 and 19 CFR 151.13 still refers to CBP as Customs.

[14] 19 CFR 151.12(c)(5) and 151.12(c)(6).

[15] 19 CFR 151.13(b)(5) and 151.13(b)(6).

[16] Based on the number of notifications received by CBP's Laboratories and Scientific Services as of February 2020. Source: CBP's Office of Field Operations, February 18, 2020, and October 26, 2022.

[17] Source: U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. *RegInfo.gov.* ''Supporting Statement Request for Information 1651–0023.'' February 28, 2022. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202112-1651-008.* Accessed October 28, 2022.

[18] Source: U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. *RegInfo.gov.* ''Supporting Statement Request for Information 1651–0023.'' February 28, 2022. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202112-1651-008.* Accessed October 28, 2022.

[19] The opportunity cost estimate is equal to the assumed median hourly wage of an importer ($34.81) multiplied by the hourly time burden for an importer to complete a CBP Form 28 response (2.0 hours), and then rounded.

submissions for 2022 compared to 2014 and more than a 55 percent (11,977 submissions) decrease since the Centers IFR was implemented in 2016.[20] However, due to regulatory changes the trade industry has seen since the Centers IFR, the limitations of CBP systems, trade remedies, and the fact that several importers still have not been assigned to a Center, it is not possible to determine how much the drop in CBP Form 28 submissions can be attributed to this rule. CBP and some importers may experience additional printing and mailing cost savings through reduced CBP Form 28 submissions, though the extent of these savings is unknown.

With a single Center conducting all post-release processing for a particular importer, determinations on protests, marking, and classification matters are now consistent rather than sometimes inconsistent as in the pre-Centers environment. In the pre-Centers environment, importers occasionally received different determinations on similar trade compliance issues depending on the port of entry where their merchandise was processed, which sometimes required duplicative action on behalf of CBP and the importer. The Centers' consistency may enhance importers' awareness of CBP's positions on trade compliance issues, possibly leading to improved compliance and an unknown amount of subsequent savings to both parties in the future. To the extent that the Centers' uniform processing and determinations also decrease post-summary corrections, exams, hold times, and other trade obstacles, the benefits of this rule will be higher.

In addition to creating uniform post-release processing and determinations, the Centers strengthen CBP trade personnel's industry knowledge by concentrating their expertise into a specific import industry set as opposed to the entire range of import industries. According to outreach conducted for this rule, such focused expertise has already enriched CBP relations with the trade community, as demonstrated through a Centers test participant's claim that Center account managers are very knowledgeable of their industry and are now more familiar with their imports and trade issues.[21] Several public commenters on the Centers IFR also expressed positive experiences with the Centers. Increasing Centers staff awareness of importers and their merchandise may also contribute to a decline in requests for information, exams, or holds, which provides time and cost savings to CBP and trade members.

The Centers' industry focus has also enriched trade enforcement. Using knowledge gathered through processing solely entry summaries for the electronics industry, Electronics Center employees uncovered a counterfeit electronic adapter import operation. Since discovering the counterfeiting operation, the Electronics Center has worked with the rights holder to add a trademark onto its electronic device to prevent future intellectual property rights (IPR) violations and subsequent economic losses.[22] Based on the benefits of enhanced industry knowledge gained during the Centers test phase and since the Centers IFR went into effect, CBP believes the permanent establishment of the Centers enhances CBP relations with the trade community, facilitates trade, and results in an improved ability to identify high-risk commercial importations that could enhance import safety, increase revenue protection, and reduce economic losses associated with trade violations.

Furthermore, the Centers streamline communication between CBP and the trade community by replacing communication with each port of entry with communication with one Center. The Centers serve as a single source of information and point of contact for trade members regarding importing requirements, IPR infringement or other trade violations, merchandise holds, and Partner Government Agencies (PGA) issues, eliminating the need for trade members to contact multiple CBP employees and for multiple CBP employees to share duplicative information with members of the trade. Such a decrease in redundant information requests and sharing produces time and cost savings to the trade community and CBP. The Centers also allow for enhanced communication with importers by offering extended hours of service compared to port of entry service hours, which may expedite trade. Without information on the amount of duplicative communication eliminated with the emergence of the Centers or the volume of trade expedited through the Centers' extended hours of service, the overall value of these communication benefits is unknown.

c. Net Impact of Rule

In summary, the Centers rule introduces both costs and benefits. CBP sustains $96.61 in added costs each year from reviewing Center assignment appeals, while trade members bear an annual cost of $52.22 attributable to Center assignment appeals. CBP and trade members also experience benefits from this rule's decreased import costs and time burdens, streamlined trade processing, broadened industry and trade compliance knowledge, enhanced trade enforcement posture, and improved communication, though the overall value of these benefits is unknown. Although not quantified, CBP believes this rule's benefits to CBP and the trade community are considerable, while its costs to these parties are relatively negligible. For these reasons, CBP asserts that the benefits of this rule outweigh its costs, thus providing an overall net benefit to the agency and members of the trade community.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business concern per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). CBP initially issued the Centers rule as an interim final rule under the agency management and personnel and procedural rule exceptions of the Administrative Procedure Act. Thus, a Regulatory Flexibility Act analysis was not required. *See* 5 U.S.C. 553. Nonetheless, CBP considered the economic impact of the Centers IFR on small entities. Since CBP did not receive any comments on the Centers IFR relating to the Regulatory Flexibility Act analysis, CBP adopts the Centers IFR's Regulatory Flexibility Act analysis with updated data, as presented next.

Through the Centers final rule, CBP finalizes the transition of certain trade enforcement responsibilities and the majority of post-release trade functions from the purview of port directors to Center directors.[23] Port directors continue to retain singular authority over regulations pertaining to the control, movement, examination, and

[20] Source: CBP's Office of Field Operations, February 18, 2020, and October 26, 2022.

[21] Source: Teleconference with CBP's Pharmaceuticals, Health & Chemicals Center test participant on December 19, 2013.

[22] Source: Teleconference with CBP's Electronics Center on December 3, 2013.

[23] *See* 81 FR 92978, 92983–93003 (December 20, 2016) and 84 FR 46676, 46677 (September 5, 2019), for a detailed list of trade function transitions.

release of cargo. Because the Centers introduce a new post-release processing method for all U.S. imports, this rule's regulatory changes affect all importers and brokers who enter goods into the United States, including those considered ''small'' under the Small Business Administration's (SBA) size standards.[24] Since the vast majority of importers are small businesses, this rule impacts a substantial number of small entities.[25]

This rule generates costs and benefits to importers and related members of the trade. As outlined throughout this rule, the responsibilities of the trade community remain largely unchanged due to the Centers rule. However, trade members experience costs when filing a Center assignment appeal and when notifying a Center under the requirements of amended 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6).

As previously mentioned in the ''Executive Orders 13563 and 12866'' section, importers incur an opportunity cost of $26.11 per Center assignment appeal. With two appeals expected each year, the annual cost of Center assignment appeals to the entire trade community equals $52.22. It is likely that some small entities file Center assignment appeals, though the exact number is unknown. Regardless of the number of small entities impacted by this requirement, CBP does not believe that a cost of $26.11 to file a Center assignment appeal amounts to a ''significant'' level to these entities.

Under previous, pre-Centers regulations, CBP mandated CBP-accredited laboratories and CBP-approved gaugers to contact the port director and Executive Director of Laboratories and Scientific Services on the matters previously described in 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6). Given that CBP did not receive any such notifications in the past 20 years, CBP assumes that this rule's added requirement to contact a Center director per amended 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6), will continue to not impact a substantial number of small entities. In the event that a CBP-accredited laboratory or CBP-approved gauger considered ''small'' has to notify an additional CBP representative according to these regulatory changes, CBP does not believe that requiring one more telephone call, letter, or email will have a significant economic impact on the entity.

[24] *See* 13 CFR 121.101–121.201.

[25] Source: CBP Report: Importer SBA Analysis 2022, dated May 11, 2022.

Besides costs, importers and brokers experience benefits from this rule, though the value of these benefits is unknown due to data limitations. The trade community likely benefits from the Centers rule's uniform post-release processing and decision-making, increased agency knowledge of industry practices and products, and improved communication with CBP, based on observations from the Centers test and Centers IFR. CBP expects the Centers' uniform post-release processing and trade-related determinations to decrease administrative burdens on the trade, resulting in time and cost savings. This uniformity may also enhance the trade community's awareness of CBP's position on trade compliance issues, which may improve compliance and generate an unknown amount of subsequent savings to trade members in the future. The Centers' strengthened industry focus likely enhances CBP relations with the trade community, facilitates trade, and results in an improved ability to identify high-risk commercial importations that could increase import safety, increase revenue protection, and reduce economic loss associated with trade violations. By replacing port-by-port communication with communication with one Center, the Centers serve as a single source of information for trade members regarding such subjects as importing requirements, IPR or other trade violation reports, merchandise holds, and PGA issues. This sole communication source eliminates the need for members of the trade community to contact multiple CBP resources, potentially producing additional time and cost savings. The Centers also allow for enhanced communication between CBP and the trade community by offering extended hours of service compared to port of entry service hours, which may expedite trade. Despite their unknown value, CBP notes that the economic impact of these changes on small entities, if any, is entirely beneficial. Although this rule affects a substantial number of small entities, CBP does not believe that the economic impact of this rule on small entities is significant. Accordingly, CBP certifies that this regulation does not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. As this document does not involve any collections of information under the Act, the provisions of the Act are inapplicable.

Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of DHS pursuant to section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178, 6 U.S.C. 203(1)). Accordingly, this final rule adopting the interim amendments to such regulations as final may be signed by the Secretary of DHS (or his delegate).

Amendments to the CBP Regulations

For the reasons given above, the Centers IFR amending parts 4, 7, 10, 11, 12, 24, 54, 101, 102, 103, 113, 132, 133, 134, 141, 142, 143, 144, 145, 146, 147, 151, 152, 158, 159, 161, 162, 163, 173, 174, 176, and 181 of title 19 of the Code of Federal Regulations (19 CFR parts 4, 7, 10–12, 24, 54, 101–103, 113, 132–134, 141–147, 151, 152, 158, 159, 161–163, 173, 174, 176, and 181), which was published in the **Federal Register** at 81 FR 92978 on December 20, 2016 (CBP Dec. 16–26), as amended by the technical correction published in the **Federal Register** at 84 FR 46676 on September 5, 2019 (CBP Dec. 19–11), is adopted as a final rule, without change.

Alejandro N. Mayorkas,

Secretary, Department of Homeland Security.

[FR Doc. 2023–22170 Filed 10–4–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 3, 162 and 165

[Docket Number USCG–2023–0811]

Coast Guard Sector Juneau; Sector Name Conforming Amendment

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes to Coast Guard regulations in association with a change in the Coast Guard's internal organization. The purpose of this rule is to reflect that U.S. Coast Guard Sector Juneau has been renamed U.S. Coast Guard Sector Southeast Alaska. This rule will have no substantive effect on the regulated public.

DATES: This rule is effective October 5, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0811 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Stephen Speer, District 17 Legal Office, U.S. Coast Guard; telephone 907–463–2053, email *stephen.m.speer@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of responsibility
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
OCMI Officer in Charge of Marine Inspections
OFCO Operating Facility Change Order
SAR Search and Rescue
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

For the last several years, the Coast Guard has sought to better align the names of its assets to correspond to the area of responsibility which they serve. Review of the missions and engagements within the southeastern Alaska region highlighted that ''Sector Juneau'' alone did not adequately capture the breadth and range of Coast Guard operations and relationships throughout southeast Alaska. The Coast Guard has approved the name change to U.S. Coast Guard Sector Southeast Alaska to acknowledge the long-standing commitment to all communities of southeast Alaska and to reaffirm the multi-mission support that the Coast Guard provides to ensure safety at sea and enhanced maritime governance. The geographic boundaries of Sector Southeast Alaska are not changing, and its office is not moving from Juneau, AK.

We did not publish a notice of proposed rulemaking (NPRM) before this final rule. The Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553(b)(A) because the changes it makes are conforming amendments involving agency organization. The Coast Guard also finds good cause exists under 5 U.S.C. 553(b)(B) for not publishing an NPRM because the changes will have no substantive effect on the public and notice and comment are therefore unnecessary. For the same reasons, the Coast Guard finds good cause exists under 5 U.S.C. 553(d)(3) to make the rule effective fewer than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 504(a)(2), as delegated at 33 CFR 1.05–1(h), to issue regulations necessary to implement technical, organizational, and conforming amendments and corrections to rules, regulations, and notices.

On July 17, 2023, the Coast Guard issued Operating Facility Change Order (OFCO) No. 020–23 which changed the official unit name of U.S. Coast Guard Sector Juneau to U.S. Coast Guard Sector Southeast Alaska. The previous name of Sector Juneau is described and reflected in regulations, which also contain contact details and other references to Sector Juneau. These conforming amendments update those regulations so that they contain current information.

Under 14 U.S.C. 504(a)(2), the Commandant of the Coast Guard has the authority to establish and prescribe the purpose of Coast Guard Shore establishments. This authority has been delegated to the Chief of the Coast Guard's Office of Regulations and Administrative Law under 33 CFR 1.05–1(h).

IV. Discussion of the Rule

OFCO No. 020–23, issued July 17, 2023, changed the official unit name of U.S. Coast Guard Sector Juneau to U.S. Coast Guard Sector Southeast Alaska. The July 2023 OFCO did not change the area of responsibility (AOR). The AOR of U.S. Coast Guard Sector Southeast Alaska is identical to that of what was U.S. Coast Guard Sector Juneau. All authorities and responsibilities previously assigned to Commander, U.S. Coast Guard Sector Juneau have been assigned to Commander, U.S. Coast Guard Sector Southeast Alaska. Additionally, all authorities that were vested in the Commander, U.S. Coast Guard Sector Juneau as it pertains to the COTP, the OCMI, the Federal On Scene Coordinator, the Federal Maritime Security Coordinator, and the Search and Rescue Coordinator, have been assigned to Commander, U.S. Coast Guard Sector Southeast Alaska. This rule does not change any sector, OCMI, or COTP zone boundary lines, nor does it have any substantive impact on existing regulated navigation area, safety zone, or security zone regulation, or any naval vessel protection zones.

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.

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.

This regulatory action determination is based on the finding that the name change will have no substantive effect on the public.

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.

For the reasons stated in section V.A. above, this rule will not have a significant economic impact on any member of the public, including ''small entities.''

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 consists only of an organizational amendment. It is categorically excluded from further review under paragraph L3 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1, Implementation of the National Environmental Policy Act.

List of Subjects

33 CFR Part 3

Organizations and functions (Government agencies).

33 CFR Part 162

Navigation (water), Waterways.

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 parts 3, 162 and 165 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

■ 1. The authority citation for part 3 is revised to read as follows:

Authority: 14 U.S.C. 501, 504; Public Law 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

§ 3.85–10 [Amended]

■ 2. In § 3.85–10—

■ a. In the section heading, remove the text ''Juneau:'',

■ b. In the first sentence, remove the word ''Juneau's'' and add, in its place, the words ''Southeast Alaska's'', and

■ c. In the second sentence, remove the word ''Juneau's''.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

■ 3. The authority citation for part 162 continues to read as follows:

Authority: 46 U.S.C. 70034; DHS Delegation No. 00170.1, Revision No. 01.3.

§ 162.240 [Amended]

■ 4. In § 162.240 amend paragraph (d) by removing the word ''Juneau'' and adding, in its place, the words ''Southeast Alaska''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 5. 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.

§ 165.1712 [Amended]

■ 6. In § 165.1712(d)(3), remove the word ''Juneau'' and add, in its place, the words ''Southeast Alaska''.

Michael Cunningham,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2023–21877 Filed 10–4–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0685]

RIN 1625–AA00

Safety Zone; Potomac River, Washington, DC

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. The safety zone is needed to protect personnel, vessels, and the marine environment on these navigable waters near Washington, DC from potential hazards posed by a fireworks display which will take place on October 5, 2023. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Maryland-National Capital Region, or a designated representative.

DATES: This rule is effective from 7:30 p.m. until 9:30 p.m. on October 5, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0685 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 about this rule, call or email MST2 Hollie Givens, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email *MDNCRMarineevents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section

U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsors did not notify the Coast Guard of the event in time to allow for a notice and comment period without delaying promulgation of the rule. It would be impracticable and contrary to the public interest to delay the establishment on this safety zone to publish an NPRM because doing so would prevent us from addressing the potential safety hazards associated with the fireworks display. Potential safety hazards include the accidental discharge of fireworks, dangerous projectiles and falling hot embers or other 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 impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in this October 5, 2023, display will be a safety concern for anyone near the fireworks discharge sites. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

The COTP is establishing a safety zone from 7:30 p.m. to 9:30 p.m. on October 5, 2023. The safety zone would cover all navigable waters of the Potomac River within 500 feet of a fireworks barge in approximate position latitude 38°53′43.13″ N, latitude 77°03′30.62″ W, located near the John F. Kennedy Center for Performing Arts in Washington, DC. The size of the zone and the duration of the rule are intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone, which will impact a small, designated area of the Potomac River for no more than two hours of total enforcement—hours during the evening, when vessel traffic is normally low. Moreover, the Coast Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16, to inform them about the safety zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit entry within 500 feet of a barge within a portion of the Potomac River. It is categorically excluded from further review under paragraph L63(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0685 to read as follows:

§ 165.T05–0685 Safety Zone; Potomac River, Washington, DC.

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River within 500 feet of the fireworks barge in approximate position latitude 38°53′43.13″ N, longitude 77°03′30.62″ W located near the John F. Kennedy Center for Performing Arts, Washington, DC. These coordinates are based on datum NAD 83.

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

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

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7:30 p.m. to 9:30 p.m. on October 5, 2023.

Dated: September 29, 2023.

David O'Connell,

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

[FR Doc. 2023–22166 Filed 10–4–23; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 390

[Docket No. 23–CRB–0007–AA]

Determination of Adjustment to Administrative Assessment to Fund Mechanical Licensing Collective

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; adoption of voluntary agreement.

SUMMARY: The Copyright Royalty Judges publish final regulations that adjust the amounts and terms of the Administrative Assessment To fund the Mechanical Licensing Collective.

DATES:

Effective date: October 5, 2023.

Applicability date: These rates and terms are applicable starting January 1, 2023.

ADDRESSES: *Docket:* For access to the docket to read background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/,* and search for docket number 23–CRB–0007–AA.

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On May 31, 2023, the Mechanical Licensing Collective (MLC) and the Digital Licensee Coordinator (DLC) filed a Joint Petition to Commence Proceeding to Adjust Administrative Assessment by Adoption of a Voluntary Agreement (Petition) and a Joint Motion to Adopt Voluntary Agreement and Proposed Regulations (Voluntary Agreement). By notice published in the **Federal Register** the Copyright Royalty Judges (Judges) commenced the captioned proceeding to determine an adjustment to the administrative assessment that digital music providers and any significant nonblanket licensees must pay to fund the operations of the Mechanical Licensing Collective. 88 FR 42396 (June 30, 2023) (Notice of Commencement). The Notice of Commencement included a request for petitions to participate and a schedule for submissions and proceedings.

Only two parties filed Petitions to Participate: the Mechanical Licensing Collective and the Digital Licensee Coordinator; participation in this proceeding was required by the two Petitioners. The Judges gave notice of the identity of petitioners as required by 37 CFR 355.2(f) and, in light of the

Voluntary Agreement, suspended the case schedule. *See* Notice of Identity of Petitioners and Case Scheduling Order (July 18, 2023).

Section 115(d)(7)(D)(v) of the Copyright Act authorizes the Judges to approve and adopt a negotiated agreement that has been agreed to by the Mechanical Licensing Collective and the Digital Licensee Coordinator in lieu of a determination of the administrative assessment. An administrative assessment adopted under sec. 115(d)(7)(D)(v) ''shall apply to all digital music providers and significant nonblanket licensees engaged in covered activities during the period the administrative assessment is in effect.'' *Id.*

However, the Judges, in their discretion, may reject a proposed settlement for good cause shown. 17 U.S.C. 115(d)(7)(D)(v) and 37 CFR 355.6(d). Section 355.4(c)(4) of 37 CFR establishes a process for non-settling participants to comment on a proposed settlement and for the settling participants to respond. Because there were no non-settling participants in the instant proceeding, the proposed settlement was unopposed. Moreover, the participants explained to the Judges' satisfaction how the Proposed Regulations comply with the provisions of the Copyright Act. *See generally* Voluntary Agreement. The Judges, finding no cause to reject the proposed settlement embodied in the Voluntary Agreement, hereby adopt it, and publish these final regulations implementing the settlement.

List of Subjects in 37 CFR Part 390

Copyright, Licensing and registration, Music, Phonorecords, Recordings, Royalties.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 390 as follows:

PART 390—AMOUNTS AND TERMS FOR ADMINISTRATIVE ASSESSMENTS TO FUND MECHANICAL LICENSING COLLECTIVE

■ 1. The authority citation for part 390 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b).

§ 390.1 [Amended]

■ 2. Amend § 390.1 as follows:
■ a. In the definition of ''Annual Assessment'' remove ''2021'' and add in its place ''2023''.
■ b. Remove the definition of ''Certified Minimum Fee Disclosure''.

■ 3. Amend § 390.2 by revising paragraphs (a), (b), and (c)(1) introductory text to read as follows:

§ 390.2 Amount of assessments.

(a) *2023 Annual Assessment.* The Annual Assessment for the calendar year 2023 shall be in the amount of $32,900,000.

(b) *2024 Annual Assessment.* The Annual Assessment for the calendar year 2024 shall be in the amount of $39,050,000.

(c) * * * (1) For the calendar year 2025 and all subsequent years, the amount of the Annual Assessment will be automatically adjusted by increasing the amount of the Annual Assessment of the preceding calendar year by the lesser of:

* * * * *

■ 4. Amend § 390.3 by:
■ a. In paragraph (b);
■ i. Removing ''2021'' and adding in its place ''2024'';
■ ii. Removing ''2019'' and adding in its place ''2022''; and
■ iii. Removing ''2020'' and adding in its place ''2023''.
■ b. Remove paragraph (c) and redesignate paragraphs (d) and (e) as paragraphs (c) and (d).
■ c. Revise newly redesignated paragraph (c) introductory text.

The revision reads as follows:

§ 390.3 Annual minimum fees.

* * * * *

(c) *Calculation by the MLC.* The MLC will calculate each Licensee's annual minimum fee based on usage reporting received from Licensees pursuant to 17 U.S.C. 115(d)(4). The MLC shall send invoices for the appropriate annual minimum fee to each Licensee. Licensees shall pay the annual minimum fee invoices from the MLC by the later of:

* * * * *

■ 5. Amend § 390.4 as follows:
■ a. In paragraph (b) remove the words '', except that the calculation period for the Quarterly Allocation for the first and second quarters of 2021 shall be the same as for the annual minimum fee for the 2021 Annual Assessment, and shall be calculated based upon the information provided in the Certified Minimum Fee Disclosures, as required by this part.''
■ b. Remove paragraph (c)(2)(i)(D) and redesignate paragraphs (c)(2)(i)(E) and (F) as (c)(2)(i)(D) and (E).
■ c. Revise paragraph (h).

The revision reads as follows:

§ 390.4 Annual Assessment allocation and payment.

* * * * *

(h) *2023 Annual Assessment allocation and payment.* The 2023 Annual Assessment shall be paid in two separate processes:

(1) The MLC will collect from Licensees the amount of $30,235,650 pursuant to the standard procedures outlined in the other provisions of this part for collection of the 2023 Annual Assessment, including the collection of Annual Minimum Fees and Quarterly Allocations.

(2) The MLC will collect from Allocated Licensees the amount of $2,664,350 through a separately invoiced, one-time collection, with no minimum fees applied. The amount shall be divided into two equal parts and allocated among Licensees using the formulas set forth in paragraphs (a)(1) and (a)(2) of this section. The calculation period shall be the first three months of 2023. The MLC may invoice for this collection at any time, with payment to be due no later than 45 days after receipt of the invoice from the MLC.

Dated: September 25, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

David R. Strickler,

Copyright Royalty Judge.

Steve Ruwe,

Copyright Royalty Judge.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2023–22179 Filed 10–4–23; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0269; FRL–10944–01–OCSPP]

Ledprona Double-Stranded RNA; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of Ledprona double-stranded (ds) RNA in or on potato when used as a foliar-applied insecticide for the selective control of Colorado potato beetle and in accordance with label directions and good agricultural practices. GreenLight Biosciences, Inc. submitted a petition to EPA under the Federal Food, Drug, and

Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Ledprona dsRNA under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective October 5, 2023. Objections and requests for hearings must be received on or before December 4, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0269, is available online at *https://www.regulations.gov.* Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison Le, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *https://www.ecfr.gov/current/title-40.* To access the OCSPP test guidelines referenced in this document electronically, please go to *https://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0269 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 4, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0269, by one of the following methods:

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

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

II. Background and Statutory Findings

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F8900) by GreenLight Biosciences, Inc., 200 Boston Ave., Suite 1000, Medford, MA 02155. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of Ledprona dsRNA in or on all agricultural commodities and food products. That document referenced a summary of the petition prepared by the petitioner GreenLight Biosciences, Inc., which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing a tolerance exemption for residues of Ledprona dsRNA in or on potato only, rather than all agricultural commodities and food products as requested. The reasons for this change are explained in Unit III.C.

In addition, EPA previously established a temporary tolerance exemption for residues of Ledprona dsRNA in or on potato (40 CFR 180.1403; 88 FR 28427) in conjunction with Experimental Use Permit (EUP) No. 94614–EUP–1 issued to GreenLight BioSciences, Inc. in May 2023. The temporary tolerance exemption expires on April 30, 2025. Because this action establishes a permanent tolerance exemption for residues of Ledprona dsRNA in or on potato, EPA is removing the temporary tolerance exemption as no longer necessary.

III. Final Rule

A. EPA's Safety Determination

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

infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider factors including ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Final human health risk assessment, review of product characterization and manufacturing process for the new end-use product, Calantha™, containing 0.8% of the new active ingredient ''Ledprona'' dsRNA'' (Human Health Risk Assessment). This document, as well as other relevant information, is available in the docket for this action at docket ID number EPA–HQ–OPP–2021–0269.

Ledprona (CAS# 2433753–68–3) consists of double-stranded ribonucleic acid (dsRNA) that induces mortality of the Colorado potato beetle (*Leptinotarsa decemlineata*) via a gene silencing mode of action. When dsRNA is applied, it causes the inhibition (or silencing) of the gene product, messenger RNA (mRNA), preventing the translation of the mRNA to proteins. Ledprona dsRNA targets the *Proteasome subunit beta type-5 (PSMB5)* mRNA sequence in the Colorado potato beetle. PSMB5 mRNA encodes a protein that regulates proper folding of other proteins in the Colorado potato beetle. Once Ledprona is ingested by the Colorado potato beetle, over time the lack of PSMB5 mRNA leads to the reduction of the PSMB5 protein and ultimately causes mortality.

Available data and scientific information have demonstrated that, with regard to humans, Ledprona presents no adverse effects of concern and exposure to the active ingredient will be insignificant. Dietary and drinking water exposure resulting from the proposed use is expected to be minimal due to the following factors: (1) the application rate is low (0.53 oz/acre/calendar year); (2) residues of Ledprona dsRNA on food will be limited, as Ledprona dsRNA is a foliar insecticide and is expected to undergo rapid degradation due to microbes in the environment once applied; (3) mammals possess physiological barriers to dsRNA uptake (*i.e.,* nucleases in saliva and the gastrointestinal tract, acidic conditions in the stomach, and presence of multiple membrane barriers); and (4) Ledprona dsRNA degrades rapidly in simulated gastric and intestinal fluids, including when combined with certain tank mix components (*i.e.,* fungicides and insecticides commonly used on potatoes). This information allows EPA to rely on a well-established history of exposure to RNA molecules via food and supports the conclusion that dietary exposure from the use of the active ingredient will be negligible.

With respect to dietary and drinking water hazards, submitted data demonstrate that Ledprona dsRNA is expected to pose minimal hazard. Ledprona dsRNA was found to have low toxicity via the oral route of exposure (EPA Toxicity Category IV). In addition, a bioinformatic analysis was conducted to evaluate the likelihood of off-target effects of the Ledprona dsRNA in humans *in silico* (*i.e.,* by computer analysis of Ledprona RNA segments). This analysis identified two potential human transcripts as ''off targets.'' However, further analyses of these transcripts coupled with the specificity of Ledprona dsRNA to its target indicate that Ledprona is not expected to affect these genes *in vivo,* resulting in negligible hazard.

Ledprona is not proposed for residential use and therefore a residential exposure assessment was not conducted. For non-occupational exposure, bystander exposure may occur post-application (*i.e.,* contact with treated foliage or through spray drift of nearby treated areas). Due to the low application rate coupled with spray drift advisories and restrictions on product labels, exposure via contact with treated foliage and spray drift is considered to be negligible. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' No risk of cumulative toxicity/effects from Ledprona dsRNA has been identified as no toxicity has been shown for Ledprona dsRNA in the submitted studies. Therefore, EPA has not assumed that Ledprona dsRNA has a common mechanism of toxicity with other substances. Although FFDCA section 408(b)(2)(C) provides for an additional tenfold margin of safety for infants and children in the case of threshold effects, EPA has determined that there are no such effects due to the lack of toxicity of Ledprona dsRNA. As a result, an additional margin of safety for the protection of infants and children is unnecessary.

Based upon the evaluation described above and in the Human Health Risk Assessment, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of Ledprona dsRNA. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the rapid degradation of the active ingredient in environmental and biological conditions, mammalian physiological barriers limiting the uptake of dsRNA, and the lack of effects observed in toxicity testing.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Revisions to Petitioned-for Tolerance Exemption

The petitioner requested that EPA establish a permanent tolerance exemption for residues of Ledprona dsRNA in or on all agricultural commodities and food products. EPA previously established a temporary tolerance exemption for residues of Ledprona dsRNA in or on potato in conjunction with EUP No. 94614–EUP–1. The exposure analysis and evaluation of additional data to establish this permanent tolerance exemption is based in part upon the specificity of Ledprona dsRNA to its target organism, the Colorado potato beetle, and the proposed use of Ledprona dsRNA on potatoes. No other use of Ledprona dsRNA on other agricultural commodities or food products has been proposed. As a result, EPA has not assessed whether use of Ledprona dsRNA on commodities other than potatoes would result in the same dietary exposures described in the current evaluation. Consequently, the permanent tolerance exemption for Ledprona dsRNA residues that EPA is granting in this action varies from what the petitioner sought and is limited to residues of Ledprona dsRNA in or on potato when used as a foliar-applied insecticide for the selective control of Colorado potato beetle and in

accordance with label directions and good agricultural practices.

D. Conclusion

Based on the conclusions detailed in Unit III.A. and the Human Health Risk Assessment, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of Ledprona dsRNA. Therefore, an exemption is established for residues of Ledprona dsRNA in or on potato when used as a foliar-applied insecticide for the selective control of Colorado potato beetle and in accordance with label directions and good agricultural practices. In addition, EPA is replacing the previously established temporary tolerance exemption for Ledprona dsRNA (40 CFR 180.1403) with this permanent tolerance exemption.

IX. Statutory and Executive Order Reviews

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

A. Executive Orders 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) under Executive Orders 12866, October 4, 1993 (58 FR 51735), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), because it establishes or modifies a pesticide tolerance or a tolerance exemption under FFDCA section 408, and also applies to tolerance revocations for which extraordinary circumstances do not exist.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, 44 U.S.C. 3501 *et seq.,* because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on small entities subject to the rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132, August 10, 1999 (64 FR 43255) because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175, November 9, 2000 (65 FR 67249), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, EPA's *Policy on Children's Health* applies to this action.

This rule finalizes a tolerance action under the FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' (FFDCA 408(b)(2)(C)). Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this final tolerance action.

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

This action is not subject to Executive Order 13211, May 22, 2001 (66 FR 28355), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards under the NTTAA section 12(d), 15 U.S.C. 272.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations. EPA has considered the safety risks for the pesticide subject to this rulemaking and in the context of the tolerance action set out in this rulemaking. EPA believes that the human health and environmental conditions that exist prior to this action do not result in disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples. Furthermore, EPA believes that this action is not likely to result in new disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 29, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

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

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

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

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

■ 2. Revise § 180.1403 to subpart D to read as follows:

§ 180.1403 Ledprona double-stranded RNA (CAS# 2433753–68–3); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of Ledprona dsRNA in or on potato when used as a foliar-applied insecticide for the selective control of Colorado potato beetle and in accordance with label directions and good agricultural practices.

[FR Doc. 2023–22199 Filed 10–4–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 175

[Docket No. USCG–2023–0243]

RIN 1625–AC88

DUKW Amphibious Passenger Vessels

Correction

In rule document 2023–19421, appearing on pages 62295–62301 in the issue of Monday, September 11, 2023, make the following correction:

PART 175—GENERAL PROVISIONS [Corrected]

■ On page 62300, in the third column, beginning in the second line from the bottom of the page and continuing into the first three lines, in the first column of page 62301, ''Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a); § 175.900 also issued under 44 U.S.C. 3507.'' should read ''Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103; DHS Delegation 00170.1, Revision No. 01.3, paragraph (II)(92)(a); § 175.900 also issued under 44 U.S.C. 3507.''

[FR Doc. C1–2023–19421 Filed 10–4–23; 8:45 am]

BILLING CODE 0099–10–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 803

[Docket No.: NTSB–2023–0006]

RIN 3147–AA27

Official Seal Description

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: The National Transportation Safety Board (NTSB) is amending its regulatory description of the agency's seal. Since the seal's inception, the agency has utilized various versions of the seal. For consistency, the agency is updating the regulation and codifying current agency practice. These updates will provide a revised graphical representation of the seal. Additionally, the NTSB is including non-substantive technical amendments throughout part 803 due to recent internal organizational changes and a typographical error reflected in the agency's mailing address. Since publishing the notice of proposed rulemaking (NPRM), no comments have been received.

DATES: The rule is effective November 6, 2023.

FOR FURTHER INFORMATION CONTACT: William T. (Tom) McMurry, Jr., General Counsel, (202) 314–6080, *rulemaking@ntsb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1975, the NTSB adopted an official seal as authorized by the Independent Safety Board Act of 1974 (Act), and codified the seal in part 803 of its regulations titled ''Official Seal.'' 40 FR 30232 (July 17, 1975). The adoption at that time marked the NTSB's status as an independent Federal agency. 43 FR 36454 (Aug. 17, 1978). The original seal design was that of a triskelion, which was later replaced by the American bald eagle as set forth in the NTSB's final rule. 43 FR 36454. The NTSB explained that the eagle was ''adopted in the interest of ready recognition of the Board's status as an independent agency of the Federal Government charged with the investigation of transportation accidents.'' *Id.* The agency continued, ''it is imperative that Board officials be readily recognized as agents of the U.S. Government . . . .'' *Id.*

Over thirty years later, the NTSB published its Plan for Retrospective Analysis of Existing Rules per two Executive orders that altogether advised agencies to conduct such an analysis. 77 FR 37865, 37866 (June 25, 2012). After reviewing public comments, the NTSB subsequently announced its plan to update the agency's regulations, which included part 803. 78 FR 1193 (Jan. 8, 2013). However, in the final rule, the NTSB ultimately amended certain sections of part 803, but did not revise the description of the seal found in § 803.1. *See* 81 FR 75729 (Nov. 1, 2016). Thus, the NTSB's current seal has been in effect for more than 40 years.

On July 6, 2023, the agency issued an NPRM announcing its intent to amend its regulatory description of the NTSB's seal by updating the regulation and codifying current agency practice. 88 FR 43070 (July 6, 2023). The NTSB received no comments to date and is issuing this final rule as a result.

II. Changes to § 803.1

Since the last revision of § 803.1 in August 1978, the NTSB has utilized various versions of the seal within the agency. For consistency, the NTSB is codifying what has evolved as standard agency practice. This change to update § 803.1 focuses on additional options for background colors and will provide a revised graphical representation of the seal.

While respecting the current NTSB seal, the agency is slightly modifying the design to make the seal digitally applicable. For example, the digital version of the current seal alters in appearance when applied to the NTSB uniform; specifically, the current font changes when the seal is affixed to clothing. Thus, the update to the design optimizes the seal, making it compatible with digital platforms.

Over the years, various versions of the seal have been recognized within the agency, but have never been codified; that recognition is now reflected in this final rule. The agency clarifies that when the full color seal is used in print or digital media, the seal must be in a white circle. When the full color seal is embroidered on the official NTSB uniform, the seal's background color must be that of the material of the uniform.

Also, this final rule updates the regulatory description to reflect modern times. The NTSB will now use gender-neutral language to refer to the eagle. Further, the agency will replace the Latin terms ''dexter'' and ''sinister'' with ''right'' and ''left'', respectively.

Additionally, the minor alteration of the NTSB's eagle will be more

consistent with the Federal Government's official American eagle. The inscriptions encircling the NTSB's eagle—''E Pluribus Unum'' and ''National Transportation Safety Board''—will be updated from Serif font to Sans Serif font.

A side-by-side comparison of the NTSB's current and updated versions of the seals appears below, respectively:

III. Technical Amendments

In 2022, the NTSB made organizational changes to its Office of the Administration, which the agency renamed as the Office of Human Capital Management and Training (HCT). The head of HCT is the Chief Human Capital Officer, who now has custody and control of the seal. Accordingly, due to this reorganization, the NTSB is including non-substantive technical amendments throughout part 803 to reflect the change in the agency's office designation. Thus, the agency is revising all references to the ''Director, Office of Administration'' with ''Chief Human Capital Officer'' in §§ 803.3 and 803.5.

Additionally, the agency is correcting a typographical error reflected in the zip code of the NTSB's mailing address.

IV. Regulatory Analysis

Because the NTSB is an independent agency, this final rule does not require an assessment of its potential costs and benefits under section 6(a)(3) of Executive Order (E.O.) 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993). In addition, the NTSB has considered whether this final rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities.

The NTSB does not anticipate this final rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this final rule does not have implications for federalism under E.O. 13132, Federalism, 64 FR 43255 (Aug. 4, 1999).

This final rule complies with all applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, 61 FR 4729 (Feb. 5, 1996), to minimize litigation, eliminate ambiguity, and reduce burden. The NTSB has evaluated this final rule under: E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 16, 1994); E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, 62 FR 19885 (Apr. 21, 1997); E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000); E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 18, 2001); and the National Environmental Policy Act, 42 U.S.C. 4321–47. Pursuant to the Paperwork Reduction Act, the NTSB has determined that there is no new requirement for information collection associated with this final rule. The NTSB has concluded that this final rule neither violates nor requires further consideration under those orders, statutes, E.O.s, and acts.

List of Subjects in 49 CFR Part 803

Seals and insignia.

Accordingly, for the reasons stated in the preamble, the NTSB amends 49 CFR part 803 as follows:

PART 803—OFFICIAL SEAL

■ 1. The authority citation for part 803 continues to read as follows:

Authority: 49 U.S.C. 1111(j), 1113(f).

■ 2. Revise § 803.1 to read as follows:

§ 803.1 Description.

The official seal of the National Transportation Safety Board (NTSB) is described as follows: An American bald eagle with wings displayed, holding an olive branch in its right talon and a bundle of 13 arrows in its left talon. Above the eagle's head is a white scroll inscribed ''E Pluribus Unum'' in black. The eagle bears a shield that resembles the United States flag with vertical stripes of alternating white and red and a blue top; all are within an encircling inscription, ''National Transportation Safety Board''. The eagle's wings, body, and upper portion of the legs are shades of brown. The head, neck, and tail are white. The beak, lower portion of the legs, feet, arrows, olive branch, and encircling inscription are gold. When the full color seal is illustrated on print or digital media, the background of the seal must be white. When the full color seal is embroidered on official NTSB uniform items, the seal's background must be the color of the material. When the monochrome seal is used on print or digital media, the seal can be displayed in black, blue, or in white on contrasting background. When used on official NTSB uniform items, the monochrome seal can be illustrated in yellow-gold on navy blue material. The monochrome version of the NTSB's official seal appears in Figure 1.

Figure 1 to § 803.1

§ 803.3 [Amended]

■ 3. Amend § 803.3 by:
■ a. In paragraph (a), removing ''Director, Office of Administration'' and adding in its place ''Chief Human Capital Officer''; and
■ b. In paragraph (b), removing ''Director, Office of Administration'' and adding in its place ''Chief Human Capital Officer''.

§ 803.5 [Amended]

■ 4. Amend § 803.5, in paragraph (c), by removing ''Director, Office of Administration'' and ''20594–003'' and adding in their place ''Chief Human Capital Officer'' and ''20594'', respectively.

William T. McMurry, Jr.,

General Counsel.

[FR Doc. 2023–22193 Filed 10–4–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2020–0123; FXES11130200000–223–FF02ENEH00]

RIN 1018–BD61

Endangered and Threatened Wildlife and Plants; Revision of a Nonessential Experimental Population of Black-Footed Ferrets (Mustela nigripes) in the Southwest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), are revising the regulations for the nonessential experimental population of the black-footed ferret (*Mustela nigripes;* ferret) in Arizona. We established the Aubrey Valley Experimental Population Area (AVEPA) in 1996 in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (ESA). This rule allows the introduction of ferrets across a larger landscape as part of a nonessential experimental population and includes the AVEPA within a larger ''Southwest Experimental Population Area'' (SWEPA), which includes parts of Arizona and identified contiguous Tribal lands in New Mexico and Utah. This revision provides a framework for establishing and managing reintroduced populations of ferrets that will allow greater management flexibility and increased landowner and manager cooperation. The best available data indicate that additional reintroductions of the ferret into more widely distributed habitat in the SWEPA is feasible and will promote the conservation of the species.

DATES: This rule is effective November 6, 2023.

ADDRESSES: This final rule, an environmental assessment (EA), and a finding of no significant impact (FONSI) are available at the following website: *https://www.regulations.gov* in Docket No. FWS–R2–ES–2020–0123. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will also be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2500 South Pine Knoll Drive, Flagstaff, AZ 86001; telephone 928–556–2001.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Field Supervisor, Phone: 602–242–0210. Direct all questions or requests for additional information to: BLACK-FOOTED FERRET QUESTIONS, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 9828 North 31st Avenue, Suite C3, Phoenix, AZ 85051. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Black-footed ferrets (*Mustela nigripes;* ferrets), medium-sized members of the weasel family (Mustelidae), are carnivorous, extremely specialized predators that are highly dependent on prairie dogs (*Cynomys* spp.) for food and shelter (Hillman 1968, p. 438; Sheets et al. 1972, entire; Campbell et al. 1987, entire; Forrest et al. 1988, p. 261; Biggins 2006, p. 3). Because ferrets are dependent on prairie dogs in this way, occupied prairie dog habitat is considered synonymous with ferret habitat (USFWS 2019, pp. 5–6). The USFWS listed the ferret as an endangered species in 1967 under the Endangered Species Preservation Act of 1966, which was the predecessor to the current Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) (32 FR 4001, March 11, 1967). With the passage of the ESA, we incorporated the ferret into the Lists of Endangered and Threatened Wildlife under the ESA, found at 50 CFR 17.11 (39 FR 1175, January 4, 1974).

The 1982 amendments to the ESA included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Our implementing regulations for section 10(j) of the ESA are in 50 CFR

17.81. These regulations state that the USFWS may designate as an experimental population a population of endangered or threatened species that we will release into habitat that is capable of supporting the experimental population outside the species' current range. Hereafter in this document, we refer to a species-specific rule issued under section 10(j) of the ESA as a ''10(j) rule.''

This Rulemaking Action

On June 25, 2021, we published a proposed rule to expand the existing Aubrey Valley Experimental Population Area (AVEPA) to encompass a larger area, the ''Southwest Experimental Population Area'' (SWEPA), which includes parts of Arizona and identified contiguous Tribal lands in New Mexico and Utah (86 FR 33613). The proposed rule provided a framework for establishing and managing reintroduced populations of ferrets in this area that will allow for greater management flexibility and increased landowner cooperation. The best available data indicate that additional reintroductions of the ferrets into more widely distributed habitat in the proposed SWEPA is feasible and will promote the conservation of the species.

We sought comments on the proposed rule and on a draft environmental assessment of the potential environmental impacts of the proposed rule until August 24, 2021. We received 20 comment submissions by that date. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270, July 1, 1994), and our August 22, 2016, memorandum updating and clarifying the role of peer review, we also sought the expert opinion of six appropriate independent specialists regarding the scientific data and interpretations contained in the proposed rule. The purpose of such peer review is to ensure that we base our decisions on scientifically sound data, assumptions, and analyses. This final rule incorporates, and addresses comments received during the public comment and peer review processes.

Under 50 CFR 17.81(b), before authorizing the release as an experimental population of any population of an endangered or threatened species, the USFWS must find by regulation that such release will further the conservation of the species. In making such a finding, the USFWS shall use the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see ''*Possible Adverse Effects on Wild and Captive-Breeding Populations*'' below);

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future (see ''*Likelihood of Population Establishment and Survival*'' below);

(3) The relative effects that establishment of an experimental population will have on the recovery of the species (see ''*Effects of the SWEPA on Recovery Efforts for the Species*'' below);

(4) The extent to which the introduced population may be affected by existing or anticipated Federal, Tribal, or State actions or private activities within or adjacent to the experimental population area (see ''*Actions and Activities that May Affect the Introduced Population*'' below); and

(5) When an experimental population is being established outside of its historical range, any possible adverse effects to the ecosystem that may result from the experimental population being established.

Furthermore, under 50 CFR 17.81(c), any regulation designating experimental populations under section 10(j) of the ESA shall provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s) (see ''*Identifying the Location and Boundaries of the SWEPA*'' below);

(2) A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see ''*Is the Experimental Population Essential or Nonessential?*'' below);

(3) Management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate, remove, and/or contain the experimental population designated in the regulation from nonexperimental populations (see ''*Management Restrictions, Protective Measures, and Other Special Management*'' below); and

(4) A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see ''*Review and Evaluation of the Success or Failure of the SWEPA*'' below).

Under 50 CFR 17.81(e), the USFWS consults with appropriate State fish and wildlife agencies, affected Tribal governments, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, 10(j) rules represent an agreement between the USFWS, affected Tribal governments, State and Federal agencies, local governments, and persons holding any interest in land or water that may be affected by the establishment of an experimental population.

Under 50 CFR 17.81(f), the Secretary may designate critical habitat as defined in section 3(5)(A) of the ESA for an essential experimental population. The Secretary will not designate critical habitat for nonessential populations. The term essential experimental population means an experimental population the loss of which would be likely to appreciably reduce the likelihood of the survival of the species in the wild. We classify all other experimental populations as nonessential (50 CFR 17.80).

Under 50 CFR 17.82, we treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations with respect to that population. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population, allowing us discretion in devising management programs to provide for the conservation of the species.

Under 50 CFR 17.83(a), for the purposes of section 7 of the ESA, we treat nonessential experimental populations as threatened when located in a National Wildlife Refuge or unit of the National Park Service (NPS), and Federal agencies follow conservation and consultation requirements per paragraphs 7(a)(1) and 7(a)(2) of the ESA, respectively. We treat nonessential experimental populations outside of a National Wildlife Refuge or NPS unit as species proposed for listing, and Federal agencies follow the provisions of paragraphs 7(a)(1) and 7(a)(4) of the ESA. In these cases, nonessential experimental population designation provides additional flexibility, because it does not require Federal agencies to consult under section 7(a)(2). Instead, section 7(a)(4) requires Federal agencies to confer (not consult) with the USFWS

on actions that are likely to *jeopardize* the continued existence of a species proposed to be listed. A conference results in conservation recommendations, which are discretionary. Because the nonessential experimental population is, by definition, not essential to the continued existence of the species in the wild, the effects of proposed actions on the population will generally not rise to the level of ''jeopardy.'' As a result, Federal agencies will likely never request a formal conference for actions that may affect ferrets established in the SWEPA. Nonetheless, some Federal agencies voluntarily confer with the USFWS on actions that may affect a species proposed for listing.

Legal Status

We listed the ferret as an endangered species in 1967 under the Endangered Species Preservation Act of 1966 (32 FR 4001, March 11, 1967). We later codified this list in part 17 of title 50 in the U.S. Code of Federal Regulations (CFR) (35 FR 16047, October 13, 1970). With the passage of the ESA in 1973 (16 U.S.C. 1531 *et seq.*), we incorporated those species previously listed in the CFR into the Lists of Endangered and Threatened Wildlife and Plants under the ESA, found at 50 CFR 17.11 and 17.12 (39 FR 1175, January 4, 1974).

In 1996, we designated the population of ferrets established via reintroduction in Aubrey Valley as a nonessential experimental population (61 FR 11320, March 20, 1996). The AVEPA includes parts of Coconino, Mohave, and Yavapai Counties in northwestern Arizona. At the time of its designation, the AVEPA consisted of 22 percent State lands, 45 percent lands of the Hualapai Tribal Nation, and 33 percent deeded lands owned by the Navajo Nation.

We treated ferrets as an endangered species outside the AVEPA, and the provisions and exceptions of the experimental population designation did not apply. In 2013, the USFWS developed a rangewide programmatic Safe Harbor Agreement (SHA) to encourage non-Federal landowners to voluntarily undertake conservation activities on their properties to benefit the ferret (USFWS 2013b, entire) (see ''*Historical Range*'' below). Through certificates of inclusion, we enrolled willing landowners in our SHA through enhancement of survival permits issued under section 10(a)(1)(A) of the ESA. Through the SHA, incidental take of ferrets outside of the AVEPA by participating landowners and nonparticipating neighboring landowners was permissible.

Under state law, general provisions of Arizona Revised Statutes, title 17, protect all of Arizona's native wildlife, including federally listed threatened and endangered species. Under Navajo Nation law, it is unlawful for any person to take ferrets. All wildlife on the Hopi Reservation is the property of the Hopi Tribe, and Hopi Tribal law provides for take (see ''Management Restrictions, Protective Measures, and Other Special Management'' below, for more information on State and Tribal legal status).

Biological Information

Species Description

The ferret is a medium-sized member of the weasel family (Mustelidae) weighing approximately 1.4 to 2.5 pounds (645 to 1125 grams) and measuring approximately 19 to 24 inches (480 to 600 millimeters) in total length. Its body color includes yellowish-buff, occasionally whitish, upper parts, and black feet, tail tip, and ''mask'' across the eyes (Hillman and Clark 1980, p. 1; Anderson et al. 1986, pp. 15–16).

Ecology/Habitat Use/Movement

Ferrets are carnivorous, extremely specialized predators highly dependent on prairie dogs (*Cynomys* spp.) (Hillman 1968, p. 438; Biggins 2006, p. 3). Ferrets prey predominantly on prairie dogs (Sheets et al. 1972, entire; Campbell et al. 1987, entire), occupy prairie dog burrows, and do not dig their own burrows (Forrest et al. 1988, p. 261). Ferrets select areas within prairie dog colonies that contain high burrow densities and thus high densities of prairie dogs (Biggins et al. 2006, p. 136; Eads et al. 2011, p. 763; Jachowski et al. 2011a, pp. 221–223; Livieri and Anderson 2012, pp. 201–202). Given their obligate tie to prairie dogs, ferret populations associated with larger, highly connected prairie dog colonies are more likely to be resilient and less likely to be extirpated by stochastic events compared to those associated with smaller, isolated colonies (Miller et al. 1994, p. 678; Jachowski et al. 2011b, entire). Resiliency is the ability of populations to tolerate natural, annual variation in their environment and to recover from periodic or random disturbances (USFWS 2019, p. 2). Such stochastic events include epizootics, such as sylvatic plague (plague), and extreme weather or climate, including drought.

The last naturally occurring wild ferret population, in Wyoming, averaged approximately 25 breeding adults throughout intensive demographic studies from 1982 to 1985 (USFWS 2019, p. 10). Based on this and population modeling, the USFWS considers 30 breeding adults a minimum for a population of ferrets to be self-sustaining (USFWS 2013a, p. 70). Ferrets require large, contiguous prairie dog colonies to meet their individual needs, with colonies no more than approximately 4.35 miles (7 kilometers [km]) apart (Biggins et al. 1993, p. 78). A conservative estimate of habitat requirements to support one female ferret is 222 acres (ac) (90 hectares [ha]) of black-tailed prairie dog (*C. ludovicianus*) colonies, or 370 ac (150 ha) of Gunnison's prairie dog (*C. gunnisoni*) colonies (USFWS 2013a, p. 73). Assuming a two-to-one female-to-male sex ratio and overlapping male and female home ranges (Biggins et al. 1993, p. 76), we estimate that a population of 30 breeding adult ferrets may require 4,450 ac (1,800 ha) of black-tailed prairie dog colonies, or approximately 7,415 ac (3,001 ha) of Gunnison's prairie dog colonies (USFWS 2013a, p. 74).

Natal dispersal, defined as a permanent movement away from the birth area, occurs in the fall months among the young-of-the-year, although adults occasionally make permanent moves (Forrest et al. 1988, p. 268). Newly released captive-born ferrets have dispersed up to approximately 30 miles (48 km) (Biggins et al. 1999, p. 125), and wild-born ferrets more than approximately 12 miles (19 km) (USFWS 2019, p. 7). Males tend to move greater distances than females.

Historical Range

The black-footed ferret is the only ferret species native to the Americas (Anderson et al. 1986, p. 24). Before European settlement, ferret occurrence coincided with the ranges of three prairie dog species (black-tailed, white-tailed [*C. leucurus*], and Gunnison's), which collectively covered about 100 million ac (40.5 million ha) of Great Plains, mountain basins, and semi-arid grasslands extending from Canada to Mexico (Anderson et al. 1986, pp. 25–50; Biggins et al. 1997, p. 420). This amount of habitat could have supported 500,000 to one million ferrets (Anderson et al. 1986, p. 58). We have records of ferret specimens from Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming in the United States and from Saskatchewan and Alberta in Canada (Anderson et al. 1986, pp. 25–50). Ferrets likely additionally occurred in Mexico, based on the proximity of a specimen to Mexico, fossil records, and prairie dog distribution (USFWS 2019,

p. 42). A rancher discovered the last wild population of ferrets (from which all existing ferrets descend) near Meeteetse, Wyoming, in 1981, after they were presumed extinct (Lockhart et al. 2006, p. 8). By 1987, the USFWS and partners removed all known surviving wild ferrets (18 individuals) from this area to initiate a captive-breeding program following disease outbreaks (Lockhart et al. 2006, p. 8). Since then, no naturally occurring wild populations have been located, despite extensive and intensive rangewide searches; it is unlikely any undiscovered natural wild populations remain. For these reasons, the USFWS considers the ferret to be extant in reintroduced populations and extirpated throughout the rest of its historical range (USFWS 2017, p. 2).

In the Southwest, in Arizona, Colorado, New Mexico, and Utah, ferrets occurred within the historical range of Gunnison's prairie dogs (Hillman and Clark 1980, entire); and in New Mexico, Mexico, and likely southeastern Arizona they occurred within the historical range of black-tailed prairie dogs (Hillman and Clark 1980, entire; Hoffmeister 1986, p. 194). In Arizona, historical ferret collections (1929–1931) come from three locations in Coconino County (Belitsky et al. 1994, p. 29). In 1967, U.S. Department of Agriculture Federal Animal Damage Control personnel (now known as Wildlife Services) reported seeing ferret sign while poisoning prairie dogs (pers. comm. 1993, as cited in Belitsky et al. 1994, p. 2). Anderson et al. (1986, p. 25) speculated that prairie dog populations of sufficient size to support ferrets may have existed in northeastern Arizona on the Navajo Nation; however, the ferret currently is not present in that area (Navajo Nation 2020, n.p.). Prairie dogs currently occur in substantial numbers on Hopi (Johnson et al. 2010, entire) and Hualapai Tribal lands, the latter of which the AVEPA partially overlaps.

Dramatic historical declines in prairie dogs, coupled with prevalence of plague throughout the ferret's historical range, and the failure to locate new wild ferrets, suggests the species is extirpated in Arizona except where it has been reintroduced (USFWS 2017, p. 2). The date of historical ferret extirpation in the Southwest is unknown; in Arizona, we have no verified reports for ferrets from 1931 through 1995, after which we initiated reintroduction efforts in the AVEPA. We consider the historical range of the ferret in Arizona to coincide with the historical ranges of the Gunnison's and black-tailed prairie dogs.

Threats/Causes of Decline

Ferret populations decreased historically for three main reasons. First, major conversion of native range to cropland, primarily in the eastern portion of the species' range, began in the late 1800s. Second, widespread poisoning of prairie dogs to reduce perceived competition with domestic livestock for forage began in the early 1900s. Third, in the 1930s, plague began to appreciably adversely affect both prairie dogs and ferrets (Eskey and Hass 1940, p. 62). By the 1960s, prairie dog occupied habitat reached a low of about 1.4 million ac (570,000 ha) in the United States (Bureau of Sport Fisheries and Wildlife 1961, n.p.). For these reasons, ferret numbers declined to the point of perceived extinction. These threats resulted in a substantial loss of prairie dogs, which led to an even greater decline in ferret populations due to the species' dependence on prairie dog colonies (Lockhart et al. 2006, p. 7). Such population bottlenecks can result in loss of genetic diversity and fitness and can manifest following even a temporary loss of habitat (USFWS 2013a, p. 23).

In Arizona, the combined effects of prairie dog poisoning and plague decreased the area occupied by Gunnison's prairie dogs from about 6.6 million ac (2.7 million ha) historically to about 445,000 ac (180,000 ha) in 1961 (Bureau of Sport Fisheries and Wildlife 1961, n.p.; Oakes 2000, pp. 169–171). Estimates of historical black-tailed prairie dog habitat in Arizona range from 650,000 ac (263,000 ha) to 1,396,000 ac (565,000 ha) (Van Pelt 1999, p. 1; Black-footed Ferret Recovery Foundation 1999, n.p.). Extirpation of black-tailed prairie dogs in Arizona probably occurred around 1960 (Van Pelt 1999, pp. 3–4). As with the rangewide effects, these prairie dog losses also resulted in the loss of ferrets, and by the 1960's, ferrets were considered extirpated in Arizona (Lockhart et al. 2006, pp. 7–8).

Cropland Conversion

Major conversion of native range to cropland eliminated millions of acres of ferret habitat in the eastern portion of the ferret's range, particularly black-tailed prairie dog colonies (USFWS 2013a, p. 23). Land conversion caused far less physical loss of Gunnison's prairie dog habitat, because outside of riparian corridors and proximate irrigated lands, much of the habitat occupied by this species is not suitable for crops (Lockhart et al., 2006, p. 7). Knowles (2002, p. 12) noted displacement of prairie dogs from the more productive valley bottomlands in Colorado and New Mexico, but not in Arizona. Instead of converting native rangeland to irrigated crop and pasture lands, land-use of the range in Arizona was and continues to consist primarily of cattle grazing, with relatively minimal crop development. Cropland conversion in Arizona, while affecting ferrets locally, was not a major cause of decline in the State.

Prairie Dog Poisoning

Poisoning was a major cause of the historical declines of prairie dogs and subsequently ferrets (Forrest et al. 1985, p. 3; Cully 1993, p. 38; Forrest and Luchsinger 2005, pp. 115–120). Similar to other threats limiting ferret recovery, poisoning affects ferrets through inadvertent secondary effects, poisoning caused by consumption of poisoned prairie dogs, or indirectly, through the loss of the prairie dog prey base.

In Arizona, from 1916 to 1933, rodent control operations treated 4,365,749 ac (1,766,756 ha) of prairie dog colonies (Oakes 2000, p. 179). A 1961 Predator and Rodent Control Agency report showed a 92 percent decline in occupied prairie dog habitat in Arizona since 1921, with Gunnison's prairie dogs occupying 445,370 ac (180,235 ha). Only 9,956 ac (4,029 ha) of prairie dog colonies in the 1961 surveys were located on non-Tribal lands. The 1961 Predator and Rodent Control Agency report also documented the extirpation of black-tailed prairie dogs from Arizona. This historical prairie dog poisoning was a major cause of decline of ferrets in Arizona.

Plague

Sylvatic plague is the most significant challenge to ferret recovery (USFWS 2019, p. 21), with the USFWS classifying it as an imminent threat of high magnitude (USFWS 2020, p. 5). Plague is an exotic disease, caused by the bacterium *Yersinia pestis,* transmitted by fleas, which steamships inadvertently introduced to North America in 1900. Because it was foreign and unknown to their immune systems, both prairie dogs and ferrets were and continue to be extremely susceptible to mortality from plague (Barnes 1993, entire; Cully 1993, entire; Gage and Kosoy 2006, entire). Plague can be present in a prairie dog colony in an epizootic (swift, large-scale die-offs) or enzootic (persistent, low level of mortality) state. Most of the information we have about the effects of plague is from epizootic events. Although its effects are not as dramatic as an epizootic outbreak, enzootic plague may result in negative growth rates for

prairie dog and ferret populations and hinder ferret recovery (USFWS 2013a, pp. 33, 100). Other factors that reduce prairie dog numbers and fitness (*e.g.,* shooting, poisoning, and drought) increase the flea-to-individual host ratio, and thus may contribute to plague epizootic events (Biggins and Eads 2019, p. 7).

The first confirmation of plague in Gunnison's prairie dogs in Arizona occurred in 1932, but we have limited historical data on the extent of its effects (Wagner and Drickamer 2003, p. 5). In 2003, Wagner et al. (2006, p. 337) reported that in the previous 7 to 15 years, there had been a large reduction in the number of active Gunnison's prairie dog colonies in Arizona, primarily due to outbreaks of plague, which they said was the dominant negative effect on Arizona prairie dog populations. Prairie dogs in northern Arizona will likely continue to experience effects from enzootic plague and epizootic plague outbreaks (Biggins and Eads 2019, pp. 6–8; Wagner et al. 2006, p. 337).

Other Impediments to Recovery

To recover ferrets, purposeful management of prairie dog populations is needed to provide habitat of sufficient quality and in a stable spatial configuration suitable to support and maintain new populations of reintroduced ferrets. Unfortunately, current management efforts for the species are failing to meet these conservation objectives, rangewide (USFWS 2013a, pp. 46, 58, table 6; USFWS 2020 p. 5). The keys to correcting current management inadequacies are active plague management and ongoing widespread partner involvement (USFWS 2013a, pp. 46–48) to facilitate establishment of new ferret reintroduction sites and appropriately manage the quality and configuration of ferret habitat and potential ferret habitat within the species' range.

In addition, consideration of other factors that may act alone or in concert with threats is necessary when planning and implementing recovery efforts. For example, canine distemper, a disease endemic to the United States, posed a challenge to early ferret reintroduction efforts (Wimsatt et al. 2006, pp. 249–250). Today, however, the use of commercial vaccines deployed in captive and wild ferret populations has minimized the threat of catastrophic population losses due to canine distemper (USFWS 2013a, pp. 29–30). As discussed in the Black-Footed Ferret Recovery Plan and Species Status Assessment Report (USFWS 2013a, pp. 53–55; USFWS 2019, pp. 25, 68), we anticipate that climate change will alter and reduce prairie dog habitat and influence plague outbreaks. We also discuss prairie dog shooting and Federal and non-Federal actions and activities in ''*Actions and Activities that May Affect the Introduced Population*'' below.

Recovery, Captive Breeding, and Reintroduction Efforts to Date

Recovery Strategy and Criteria

The goal of the Black-footed Ferret Recovery Plan (Recovery Plan) is to recover the ferret to the point at which it can be reclassified to threatened status (downlisted) and ultimately removed (delisted) from the List of Endangered and Threatened Wildlife (USFWS 2013a, pp. 5, 59). The strategy of the Recovery Plan is to involve many partners across the historical range of the species in order to establish multiple, widely spaced populations, within the range of all three prairie dog species. Such distribution will safeguard the ferret, as a whole, from the widespread chronic effects of plague as well as other periodic or random disturbances that may result in the loss of a population in one or more given areas. Partner involvement is critical for the development of new reintroduction sites and their long-term management because not only the USFWS, but also our partners, have the authority to manage prairie dogs and prairie dog habitat on respective State, Tribal, Federal, or privately owned lands. Although ferret habitat is substantially decreased relative to historical times, if potential habitat is appropriately managed to support ferret reintroductions, a sufficient amount of habitat remains to support ferret recovery (USFWS 2013a, p. 5). The Recovery Plan provides objective, measurable criteria to achieve downlisting and delisting of the ferret.

Recovery Plan downlisting and delisting criteria include managing a captive-breeding population of at least 280 adults as a source population to establish and supplement free-ranging populations and repopulate sites in the event of local extirpations. Downlisting criteria include establishing at least 1,500 free-ranging breeding adults in 10 or more populations, in at least 6 of 12 States in the species' historical range, with no fewer than 30 breeding adult ferrets in any population, and at least 3 populations in colonies of Gunnison's and white-tailed prairie dogs. Delisting criteria include at least 3,000 free-ranging breeding adults in 30 or more populations, in at least 9 of 12 States in the species' historical range. There should be no fewer than 30 breeding adults in any population, and at least 10 populations with 100 or more breeding adults, and at least 5 populations in Gunnison's and white-tailed prairie dog colonies. We must meet these population objectives for at least 3 years prior to downlisting or delisting. Habitat-related recovery criteria include maintaining 247,000 ac (100,000 ha) of prairie dog colonies at reintroduction sites for downlisting, and 494,000 ac (200,000 ha) for delisting (USFWS 2013a, pp. 61–62).

Additionally, for each State in the historical range of the species, the Recovery Plan includes State-level recovery guidelines proportional to the amount of prairie dog habitat historically present to equitably help support and achieve the overall recovery strategy and criteria (USFWS 2013a, p. 69). Guidelines for Arizona's contribution to downlisting are 74 free-ranging breeding adult ferrets on 17,000 ac (6,880 ha) of Gunnison's prairie dog occupied habitat; delisting guidelines are 148 breeding adults on 34,000 ac (13,760 ha) (USFWS 2013a, table 8). The guidelines for New Mexico and Utah are 220 and 25 breeding adult ferrets for downlisting, respectively, and 440 and 50 breeding adults for delisting; most of these individuals would occur in black-tailed or white-tailed prairie dog habitat.

Captive Breeding

The USFWS and partners established the ferret captive-breeding program from 18 ferrets captured from the last known wild population at Meeteetse, Wyoming, from 1985 to 1987 (Lockhart et al. 2006, pp. 11–12). Of those 18 ferrets, 15 individuals, representing the genetic equivalent of 7 distinct founders (original genetic contributor, or ancestor), produced a captive population that is the foundation of present recovery efforts (Garelle et al. 2006, p. 4). All extant reintroduced ferrets descended from those seven founders. The purpose of the captive-breeding program is to maintain a secure and stable ferret population with maximum genetic diversity, to provide a sustainable source of ferrets for reintroduction to achieve recovery of the species (USFWS 2013a, pp. 6, 81). The captive-breeding population of ferrets is the primary repository of genetic diversity for the species. There are currently six captive-breeding facilities maintained by the USFWS and its partners: the USFWS National Black-footed Ferret Conservation Center near Wellington, Colorado; the Cheyenne Mountain Zoological Park, Colorado Springs, Colorado; the Louisville

Zoological Garden, Louisville, Kentucky; the Smithsonian's National Zoo and Conservation Biology Institute, Virginia; the Phoenix Zoo, Phoenix, Arizona; and the Toronto Zoo, Toronto, Ontario, Canada. The combined population of all 6 facilities is currently about 300 ferrets (USFWS 2020, p. 2).

The USFWS and our partners manage the demography and genetics of the captive population consistent with guidance from the Association of Zoos and Aquariums (AZA) Black-footed Ferret Species Survival Plan (SSP®). This includes maintaining a stable breeding population of at least 280 animals with a high level of genetic diversity and providing a sustainable source of ferrets for reintroduction. The captive-breeding facilities produce about 250 juvenile ferrets annually and have produced about 9,300 ferrets in total (Graves et al. 2018, p. 3; Santymire and Graves 2020, p. 12). The distribution of ferrets across six widespread facilities protects the captive population from catastrophic events. Currently, we retain about 80 juveniles annually in AZA SSP® facilities for continued captive-breeding purposes. We consider the remaining juveniles genetically redundant and excess to the AZA SSP®, and available for reintroductions (USFWS 2013a, p. 81).

Each year the USFWS solicits proposals for allocations of ferrets to establish new reintroduction sites or augment existing sites, or for educational or scientific purposes (*e.g.,* plague vaccine research). The limited number of ferrets available for release each year requires that we efficiently allocate ferrets to the highest priority sites first (see ''*Ferret Allocations*'' below for allocation and prioritization protocols). A ranking procedure developed by Jachowski and Lockhart (2009, pp. 59–60) with recent modifications to the factors evaluated and application of weighted values (Black-footed Ferret Recovery Implementation Team 2014, Table 1) is used by the USFWS to guide allocation of ferrets to reintroduction sites. Ranking criteria include project background and justification, involved agencies/parties, habitat conditions, ferret population information, predator management, disease monitoring and management, contingency plans, potential for preconditioning of released ferrets, veterinary and husbandry support, and research contributions. Members of the Black-footed Ferret Recovery Implementation Team review the proposals and the USFWS's rankings of the proposals (USFWS 2013a, pp. 87–88).

Each year, the USFWS allocates 150 to 220 ferrets for reintroduction into the wild from the captive-breeding population; from 1994 to August 2022, we allocated 5,533 ferrets for release rangewide (J. Hughes, USFWS, pers. comm., August 4, 2022). The number of ferrets we allocate to a site depends on site size and prey density (USFWS 2016a, pp. 1, 21). It also depends on purpose and needs; for example, whether the purpose is to initiate establishment of a population or augment a site, which may entail multiple releases in a year. Although a release can involve a single ferret, for initial releases, the USFWS typically recommends releasing up to 20 to 30 individuals (P. Gober, USFWS, pers. comm., March 4, 2018).

Rangewide Reintroduction Efforts to Date

To date, the USFWS and partners have reintroduced ferrets at 31 sites in the western United States, Canada, and Mexico. In the United States, we have conducted 11 ferret reintroductions through experimental population designations under section 10(j) of the ESA, 17 under section 10(a)(1)(A), and 1 under section 7 of the ESA (J. Hughes, USFWS, pers. comm., December 13, 2021). Additionally, there has been one reintroduction each in Chihuahua, Mexico, and Saskatchewan, Canada. In our Species Status Assessment Report for the Black-footed Ferret (*Mustela nigripes*) (USFWS 2019, table 11; SSA), we evaluated the current condition of 29 reintroduction sites (2 sites were initiated after we began the SSA). We estimated a wild population of about 340 individuals in those sites, of which 254 occurred on 4 sites (USFWS 2019, table 3). The USFWS determined 2 of the reintroduction sites were in high condition (high resiliency) and 8 were in moderate condition (moderate resiliency) (USFWS 2019, table 11). We estimated 240,173 ac (97,197 ha) of occupied prairie dog habitat on all sites combined (USFWS 2019, p. 45). Currently, 18 sites are considered active; the other 13 sites are considered extirpated, primarily due to plague (J. Hughes, USFWS, pers. comm., December 13, 2021; USFWS 2019, p. 43).

Arizona-Specific Reintroduction Efforts to Date

The USFWS and our partners have carried out multiple ferret reintroductions and augmentations in northern Arizona. In 1996, we reintroduced ferrets to the AVEPA in cooperation with the Arizona Game and Fish Department (AZGFD), the Hualapai Tribe, and the Navajo Nation (61 FR 11320, March 20, 1996). The AVEPA was the fifth ferret reintroduction site in the United States and the first reintroduction site in a Gunnison's prairie dog population (USFWS 2013a, figure 1). In 2012, ferrets were observed outside of the AVEPA, including on the adjacent Double O Ranch, presumably dispersing from the AVEPA. We now consider the AVEPA and the Double O Ranch one reintroduction site. In 2012, the number of breeding adults at the Aubrey Valley/Double O Ranch site was 123. Both the number of ferrets at the site and the amount of occupied prairie dog habitat (about 65,500 ac [26,500 ha] in 2018) exceeded the numbers in the Recovery Plan recommended downlisting guidelines for Arizona (USFWS 2013a, table 2, table 8). Since then, substantially fewer ferrets have been documented over several years (AZGFD 2016, p. 3; USFWS 2019, p. 45). The USFWS suspects that enzootic plague may have caused this decline; however, we do not know if the observed trend is cyclical, meaning plague reoccurs from time to time, or linear, meaning that plague is constant through time. Despite lower numbers, we consider the Aubrey Valley/Double O Ranch population to be persistent (J. Hughes, USFWS, pers. comm., December 13, 2021).

In 2007, the USFWS established the Espee Ranch (a.k.a. Allotment) reintroduction site in Arizona under a section 10(a)(1)(A) research and recovery permit in cooperation with Babbitt Ranches, LLC, the U.S. Geological Survey, and AZGFD. The status of the Espee Ranch population is currently unknown but likely extirpated due to plague (AZGFD, unpub. data). The extirpation of the Espee Ranch population and the decline of the Aubrey Valley/Double O Ranch population emphasize the need for additional ferret reintroduction sites in Arizona to guard against stochastic or catastrophic events at any given site.

The Babbitt Ranches, LLC, for the Espee Allotment (the existing Espee Ranch reintroduction site), and Seibert Land Company LLC, for the Double O Ranch, enrolled in the programmatic ferret SHA with the USFWS in 2014 and 2016, respectively. The figure at the end of this rule identifies these SHA lands in the SWEPA. The Aubrey Valley/Double O Ranch reintroduction site contains the only known ferrets currently occurring in the SWEPA.

Plague Mitigation Efforts

Researchers continue making advances to address plague, even as it remains the most substantial challenge

to ferret recovery. Rocke et al. (2006, entire) developed a vaccine (F1–V) to prevent plague in ferrets; all ferrets provided for reintroduction receive the vaccine (Abbott and Rocke 2012, p. 54). Another vaccine developed is the sylvatic plague vaccine (SPV), which is delivered via treated baits to wild prairie dogs. SPV has been effective in a laboratory setting (Rocke et al. 2010, entire; Abbott and Rocke 2012, pp. 54–55), and a broad-scale experiment to test efficacy in the field found it prevented prairie dog colony collapse where plague epizootics were documented (Rocke et al. 2017, p. 443). A recent study, however, found SPV applied in the field might not provide sufficient protection for prairie dog populations to support a ferret population (Matchett et al. 2021, entire). In addition to vaccines, the powder form of the insecticide deltamethrin is applied at prairie dog burrows to control fleas and manage both enzootic and epizootic plague (Seery et al. 2003, entire; Seery 2006, entire; Matchett et al. 2010, pp. 31–33; USFWS 2013a, p. 101). However, the application of insecticidal dust is costly and labor-intensive, and there are concerns about the development of deltamethrin resistance in fleas. Therefore, the USFWS continues to work with our partners to improve the application and efficacy of the insecticide deltamethrin and to research other pesticides, such as fipronil, a systemic pulicide (insecticide effective on fleas) that is incorporated into grain baits for prairie dog consumption (Poché et al. 2017, entire; Eads et al. 2019, entire; Eads et al. 2021, entire).

Summary

Ferret recovery is a dynamic process, requiring long-term active management (*e.g.,* plague control) and involving reintroduced populations rangewide in various stages of suitability and sustainability—with some populations undergoing extirpation concurrently as others are established or reestablished after extirpation. The AVEPA population illustrates the dynamic nature of ferret recovery and conservation, which at one point exhibited ferrets dispersing outside of the experimental population area but subsequently experienced a substantial population decline, presumably due to plague, in 2013. Therefore, ferret recovery is dependent on the establishment of additional, spatially distributed populations of reintroduced ferrets in Arizona to contribute to species recovery, which establishment of the SWEPA will help to achieve.

Experimental Population

We revise and replace the existing nonessential experimental population designation for black-footed ferrets in Arizona (the AVEPA) with the SWEPA, under section 10(j) of the ESA. We base the boundaries of the 40,905,350-ac (16,554,170-ha) SWEPA on the historical range of Gunnison's and black-tailed prairie dogs, which coincides with the presumed historical range of ferrets in Arizona. The only ferrets currently occurring within the SWEPA are within the AVEPA and adjacent areas and constitute a single population. Therefore, the SWEPA, which will encompass the AVEPA, will be wholly geographically separate from other populations (see ''*Actual or Anticipated Movements*'' below). Currently, scattered throughout the SWEPA there are approximately 358,000 ac (144,880 ha) of prairie dog colonies (H. Hicks, AZGFD, pers. comm., January 26, 2018; Johnson et al., 2010, p. iv) inhabiting about 0.875 percent of the area. The SWEPA encompasses all potential ferret habitat within the boundaries of the State of Arizona, including the Hopi Reservation (excluding Hopi Villages within District 6), the Hualapai Reservation, and the Navajo Nation in its entirety, which includes the Navajo Nation's contiguous areas in New Mexico and Utah (see the figure entitled ''Southwest Nonessential Experimental Population Area (SWEPA) for the black-footed ferret'' below). Land ownership within the SWEPA includes Federal, private, State, and Tribal lands.

Potential Release Sites

We consider all potential habitat within the SWEPA as possible experimental population reintroduction locations, as we currently lack information about the distribution of habitat to appropriately identify all prospective reintroduction sites. Some portions of the SWEPA may become suitable for ferrets in the future with appropriate management, and ferrets may disperse from successful reintroduction sites as observed previously with the AVEPA. By including all potential habitat within the SWEPA where ferrets may be reintroduced or may disperse, this experimental population designation will extend regulatory flexibility across all areas in which ferrets might occur.

Because potential ferret habitat is, by definition, not yet suitable for ferrets, and the USFWS is not solely responsible for the management of wildlife outside of the National Wildlife Refuge System, we rely on partnerships with landowners or those responsible for wildlife management on their respective lands or based on their legal authorities to contribute to conservation necessary for ferret reintroduction and recovery. As the primary management agency for wildlife in Arizona, excluding Tribal lands, AZGFD's efforts and commitment to prairie dog conservation and management are key in identifying potential ferret reintroduction sites in Arizona. AZGFD developed an Interagency Management Plan for Gunnison's Prairie Dogs in Arizona, with the purpose of identifying and implementing management strategies to conserve Gunnison's prairie dogs (Underwood 2007, p. 24), and a Management Plan for the Black-footed Ferret in Arizona (AZGFD 2016, entire; Management Plan) to further their commitment to meeting the USFWS Recovery Plan guidelines for Arizona (USFWS 2013a, table 2, table 8). The USFWS reviewed and commented on the AZGFD Management Plan, ensuring that it complements the USFWS Black-footed Ferret Recovery Plan by incorporating current research and techniques that the USFWS uses to guide ferret recovery rangewide.

Within the SWEPA, the USFWS anticipates the need for at least five ferret reintroduction sites to buffer against plague or other stochastic or catastrophic events and to reliably meet Recovery Plan guidelines for Arizona in support of the rangewide recovery criteria (USFWS 2022a, n.p.). Currently six areas are considered to be established or potential reintroduction sites. The active Aubrey Valley/Double O Ranch and inactive Espee Ranch, which is being actively managed for prairie dogs, are established reintroduction sites in which future releases may occur. Four potential reintroduction sites have also been identified (see AZGFD 2016 pp. 8–10) and occur on: (1) Kaibab National Forest, Williams/Tusayan Ranger Districts; (2) CO Bar Ranch; (3) Petrified Forest National Park; and (4) Lyman Lake (see ''*Identifying the Location and Boundaries of the SWEPA*'' below for more information on these sites). These potential reintroduction sites currently lack sufficient prairie dog occupied acreage and require management to improve prairie dog populations before they can support ferrets. The USFWS is working with partners to encourage and implement purposeful prairie dog management and to identify additional potential reintroduction sites within the SWEPA.

Ferret Allocations

The USFWS approves sites for ferret reintroductions and allocates ferrets to

those sites through an annual process (see ''*Captive Breeding*'' above), giving greater consideration to sites that have plague management and monitoring plans (USFWS 2022b, p. 2). To qualify for the annual application and ranking process, States, Tribes, and/or other land managers develop annual site-specific reintroduction plans and submit them to the USFWS by mid-March for consideration. Site-specific reintroduction plans may require implementation of plague management (*e.g.,* applying Delta Dust® [deltamethrin]) at the proposed reintroduction site, as determined by the USFWS and partners.

The USFWS allocates ferrets to proposed reintroduction sites that contain sufficient prairie dog occupied habitat. The USFWS estimates sufficient prairie dog occupied habitat for Gunnison's prairie dogs as typically equating to 7,415 ac (3,000 ha), and for black-tailed prairie dogs, typically 4,450 ac (1,800 ha); (USFWS 2013a, pp. 73–74; USFWS 2019, p. 10). Our estimates, based in part on data from the Conata Basin/Badlands site in South Dakota, are likely on the high end of ferrets' actual habitat needs (USFWS 2013a, pp. 73–74). The actual amount of prairie dog occupied habitat needed varies across the ferret's range, depending on site conditions such as the density of prairie dogs. In Arizona, available research and prairie dog density data from Aubrey Valley suggests that a minimum of 5,540 ac (2,242 ha) of Gunnison's prairie dog occupied habitat is needed to consider a site potentially suitable for a ferret reintroduction (AZGFD 2016, pp. 6–7, 15). We may adjust our area estimates in the future, if further monitoring suggests that ferrets require a smaller area of habitat than our conservative estimates suggest (USFWS 2013a, p. 74). For more information about allocations, see ''*Possible Adverse Effects on Wild and Captive-Breeding Populations*'' below.

Release Procedures

The USFWS and partners release ferrets according to the guidance on release techniques in the Black-footed Ferret Field Operations Manual (USFWS 2016a, entire; Operations Manual), allowing for adjustments to the techniques according to USFWS-approved management plans. All captive-reared ferrets receive adequate preconditioning in outdoor pens at the National Black-footed Ferret Conservation Center, or other USFWS-approved facility, prior to release. Ferrets exposed to preconditioning exhibit higher post-release survival rates than non-preconditioned ferrets (Biggins et al. 1998, pp. 651–652; Vargas et al. 1998, p. 77). Captive ferrets receive vaccines for canine distemper and plague, and passive integrated transponder (PIT) tag implants for later identification, prior to release. Ferrets are released from August to November, which is when young-of-the-year ferrets disperse in the wild (USFWS 2016a, p. 16). Typically, the USFWS transports the ferrets to the site and releases them directly into suitable habitat without protection from predators, known as a ''hard release.''

Reintroduction Site Management

The USFWS is involved in the planning and decision-making processes, implementation of reintroductions, and management and monitoring of all reintroduction sites. Our partners contribute their commitment, resources, and legal authorities as wildlife managers to the management of reintroduction sites. The USFWS will partner with AZGFD on Federal, State, and private land reintroduction sites within the SWEPA, or the appropriate Tribal wildlife authority on Tribal lands, for reintroduction site management. The USFWS currently partners with AZGFD on two established reintroduction sites in Arizona. AZGFD has demonstrated their commitment to the partnership and to ferret recovery through 26 years of experience with ferret reintroductions in Arizona, development of Arizona-specific management plans for ferrets and prairie dogs (AZGFD 2016, entire; Underwood 2007, entire), and contribution of permanent and annual field staff to accomplish necessary field activities.

On non-Tribal lands in Arizona, the USFWS Operations Manual and Arizona's Management Plan guide the management of ferret reintroduction sites. On Tribal lands, the USFWS Operations Manual and any appropriate Tribal ferret management plan and other site-specific plans and procedures guide management of reintroduction sites. Partners, in conjunction with the USFWS and landowner or manager, develop a site-specific management plan, which includes monitoring and adaptive management. All involved parties follow all applicable laws regulating the protection of ferrets (see ''Management Restrictions, Protective Measures, and Other Special Management'' below).

How will the experimental population (SWEPA) further the conservation of the species?

As cited above, under 50 CFR 17.81(b), before authorizing the release as an experimental population, the USFWS must find by regulation that such release will further the conservation of the species. We explain our rationale for making our finding below. In making such a finding, we must consider effects on donor populations, the likelihood of establishment and survival of the experimental population, the effects that establishment of the experimental population will have on recovery of the species, and the extent to which the experimental population will be affected by Federal, State, or private activities.

Possible Adverse Effects on Wild and Captive-Breeding Populations

Our regulations at 50 CFR 17.81 require that we consider any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere. We know of no naturally occurring wild populations of ferrets throughout the historical range of the species (see ''*Historical Range*'' above). The USFWS considers the ferret extirpated in the wild except for reintroduced populations (*i.e.,* all ferrets in the wild are the result of reintroductions). We consider all ferrets used to establish populations at reintroduction sites that come from the captive-bred population or, occasionally, from self-sustaining reintroduced populations as surplus, meaning they are genetically redundant within the source population and their removal from the source population will not affect the source population's persistence. If animals are translocated from other reintroduction sites, only wild-born kits from self-sustaining reintroduced populations are considered for translocation into new or non-self-sustaining reintroduction sites (Lockhart, 2000–2007, as cited in USFWS 2013a, p. 27, P. Gober, USFWS, pers. comm., August 5, 2022).

The USFWS uses ferrets from the captive-bred population or a self-sustaining wild population to establish populations at reintroduction sites. In conformance with the USFWS allocation process, after we approve a reintroduction site for ferret allocations, the USFWS recommends the release of up to 20 to 30 captive-raised or wild-translocated ferrets during the first year of the reintroduction. Subsequent annual supplemental releases are expected until the population at a given reintroduction site becomes self-sustaining.

We anticipate no adverse effects on existing populations of ferrets, whether captive or wild, due to the removal of

individuals from those populations for the purpose of reintroducing and establishing new populations in the SWEPA. We base this conclusion on the purpose for and the management of the captive-bred population (see ''*Captive Breeding*'' above), the management of other sites to achieve and maintain self-sustaining status for recovery purposes, and the USFWS's allocation process, which prioritizes reintroducing the limited number of surplus ferrets to sites with high chances of success. In summary, ferrets released at reintroduction sites will be genetically redundant individuals from populations that will remain self-sustaining despite the removal of those individuals.

Likelihood of Population Establishment and Survival

In our findings for designation of an experimental population, we must consider if the reintroduced population will become established and survive in the foreseeable future. The term ''foreseeable future'' appears in the ESA in the statutory definition of ''threatened species.'' However, the ESA does not define the term ''foreseeable future.'' Similarly, our implementing regulations governing the establishment of experimental populations under section 10(j) of the ESA use the term ''foreseeable future'' (50 CFR 17.81(b)(2)) but do not define the term. Our implementing regulations at 50 CFR 424.11(d), regarding factors for listing, delisting, or reclassifying species, set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions as it relates to life history of the species and its response to threats. While we use the term ''foreseeable future'' here in a different context (to determine the likelihood of experimental population establishment and to establish boundaries for identification of the experimental population), we apply a similar conceptual framework. Our analysis of the foreseeable future uses the best scientific and commercial data available and considers the timeframes applicable to the relevant effects of release and management of the species and to the species' likely responses in view of its life-history characteristics.

In considering the likelihood of establishment and survival of populations of ferrets reintroduced in the SWEPA, we consider whether causes of the species' extirpation have been addressed. We also consider availability of suitable habitat and our previous experience with reintroduction efforts to inform our assessment of the likelihood of success of reintroductions in the SWEPA.

Addressing Causes of Extirpation Within the Experimental Population Area

Understanding the causes of the extirpation of ferret populations is necessary to sufficiently address threats to the species in the SWEPA so that reintroduction efforts are likely to be successful. Ferrets depend on prairie dog populations for food, shelter, and reproduction. Historical ferret declines resulted from: (1) widespread prairie dog poisoning; (2) adverse effects of plague on prairie dogs and ferrets; and (3) major conversion of habitat (see ''*Threats/Causes of Decline*'' above).

Widespread Poisoning of Prairie Dogs

Poisoning of prairie dogs no longer occurs to the extent and intensity that it did historically; the current use of poison to control prairie dogs occurs in limited and selective ways. Although land-use and ownership patterns in Arizona have not changed much since past poisoning campaigns, poisoning became less common in the 1970s because prairie dog populations had been reduced by over 90 percent and use of rodenticides became more closely regulated than it had been historically (USFWS 2013a, pp. 49–51). State and Federal agencies have limited involvement in control of prairie dogs on private lands unless they pose a threat to human safety or health (*e.g.,* plague transmission in an urban setting). Where State and Federal agencies have involvement, control methods have largely shifted to nonlethal techniques. For example, translocation as a method of prairie dog control is becoming more common, while lethal control seems to be declining (Seglund et al. 2006, p. 49). In addition, landowners and managers have expressed interest in managing prairie dogs specifically for ferret reintroductions, as evidenced by the number of current and potential reintroduction sites (see ''*Identified Reintroduction Sites*'' below).

Landowners and managers have used zinc phosphide as a registered rodenticide for prairie dog control since the 1940s (Erickson and Urban 2004, p. 12). In the early 2000s, manufacturers started promoting use of the anticoagulant rodenticides chlorophacinone (Rozol®) and diphacinone (Kaput®). These chemicals pose a much greater risk than zinc phosphide of secondary poisoning to nontarget wildlife that prey upon prairie dogs, such as ferrets (Erickson and Urban 2004, p. 85). In 2009, the U.S. Environmental Protection Agency (EPA) authorized use of Rozol® throughout much of black-tailed prairie dog range via a Federal Insecticide, Fungicide, and Rodenticide Act section 3 registration. However, the EPA labeled Rozol® and Kaput-D® only for the control of black-tailed prairie dogs, not Gunnison's, and the labels do not allow use in Arizona or the taking of ''endangered species.'' The EPA has also established additional restrictions through the Endangered Species Protection Bulletins that ban the use of Rozol® in ferret recovery sites. These bulletins are an extension of the pesticide label, and it is a violation of Federal and State law to use a pesticide in a manner inconsistent with the label.

In Arizona, the use of poison to control prairie dogs may occur on State, Federal, and private lands with the appropriate permit. Products registered for prairie dog control by the EPA require a pesticide applicators license, which an applicator can obtain only through a formal process with the Arizona Department of Agriculture (Underwood 2007, pp. 23–24). The extent of poisoning in Arizona is extremely limited in area compared to historical poisoning. For example, from 2013 through 2018, the Animal and Plant Health Inspection Service's (APHIS) Wildlife Services treated prairie dogs with zinc phosphide at three private properties totaling 56 ac (23 ha) of colonies, for livestock and property protection on pasture and farmland near rural communities (C. Carrillo, pers. comm., APHIS, October 23, 2019). None of these treatments occurred in or near current or proposed reintroduction areas. Given the limited use of prairie dog poisons in Arizona, and partnerships with landowners and managers willing to manage prairie dogs for ferrets, poisoning should not affect the establishment or success of reintroduced populations of ferrets.

Adverse Effects of Plague

As previously noted, plague can adversely affect ferrets directly via infection and subsequent fatality, and indirectly by decimating prairie dog populations, the ferret's prey. Management to reduce plague has improved, including dusting prairie dog burrows with insecticide to control fleas and vaccinating ferrets. The development of fipronil baits to control fleas in prairie dogs is also underway. In Colorado, black-tailed prairie dog survival improved when researchers

applied the insecticide deltamethrin as a prophylactic treatment to control fleas in prairie dog burrows (Seery et al. 2003, p. 443; Seery 2006, entire). Based on management implementation at various reintroduction sites through the efforts of our partners, we expect the threat from plague to be managed by monitoring, dusting, vaccinating, and maintaining more and widely spaced reintroduction sites (USFWS 2013a, p. 78).

In Arizona, plague management includes best management practices and adaptive management to respond to changing conditions and incorporating new techniques as researchers develop them (AZGFD 2016, p. 19, appendices E and F). In addition, AZGFD, the USFWS, and the U.S. Geological Survey are conducting an intensive plague study in the AVEPA to determine whether plague is present at an enzootic level that current plague surveillance is not detecting (H. Hicks, AZGFD, pers. comm., February 5, 2022). Plague will be an ongoing challenge to ferret recovery, but with current management tools, promising new treatments, the commitments of our partners, and the benefit of being able to establish widely spaced populations across the SWEPA, we will manage this threat sufficiently to support the conservation of the ferret at a landscape level.

Conversion of Habitat

Currently, rangewide conversion of prairie dog habitat is not significant relative to historical levels, although it may affect some prairie dog populations locally (USFWS 2013a, pp. 24–25). We do not expect agricultural land conversion and urbanization to have a measurable effect on the current condition of ferrets at the species level, because sufficient rangeland, including federally managed land, persists rangewide (USFWS 2019, pp. 27, 35). In Arizona, cropland currently covers almost 1.3 million ac (526,000 ha), or about one to two percent of the landscape (USDA 2019, p. 7), predominantly in central and southern Arizona, outside of the range of the Gunnison's prairie dog. Within the range of Gunnison's prairie dog in Arizona, agricultural development affects 31,449 ac (12,727 ha), and urban development affects 78,673 ac (31,838 ha), both of which, combined, constitute less than one percent of the range of the Gunnison's prairie dog (Seglund 2006, p. 15). There are about 22 million ac (8,900,000 ha) of agricultural activity in Arizona in the form of pastures for livestock grazing (USDA 2019, p. 19). These non-cultivated agricultural lands may represent habitat for the prairie dog and ferret in Arizona (Ernst et al. 2006, p. 91). Routine livestock grazing and ranching activities are largely compatible with maintaining occupied prairie dog habitat capable of supporting ferrets (USFWS 2013b, p. 20) (see discussion about grazing in ''*Actions and Activities that May Affect the Introduced Population*'' below).

Reintroduction Expertise

The USFWS and its partners have considerable experience establishing reintroduced ferret populations. Since 1991, we have initiated ferret reintroductions at 31 sites, including 2 in Arizona (J. Hughes, USFWS, pers. comm., December 13, 2021). These sites have had varying degrees of success, but they have all contributed to our understanding of the species' needs and effective management toward establishing reintroduced populations. The USFWS and our partners continually apply adaptive management principles through monitoring and research to ensure that the best available scientific information is used to develop new tools (*e.g.,* fipronil baits), update strategies and protocols, and identify new reintroduction sites, to progress towards recovery (USFWS 2016a, entire; AZGFD 2016, p. 19).

The USFWS and our partners have developed and refined reintroduction techniques. These include advancements and improvements in management and oversight of the captive-breeding program, veterinary care and animal husbandry (USFWS 2016a, entire), the preconditioning program (Biggins et al. 1998, entire; USFWS 2016a, pp. 34–37), release techniques, and disease and plague management, including ferret vaccination programs at individual reintroduction sites. With respect to disease management, vector control (*i.e.,* dusting and/or fipronil grain baits) and vaccination use in concert with vigilant plague epizootic monitoring may be the most effective way to reduce the rangewide effects of plague (Abbott and Rocke 2012, pp. 54–55; Tripp et al. 2017, entire). However, plague remains an ongoing issue (Scott et al. 2010, entire; Rohlf et al. 2014, entire) requiring ongoing management to maintain both the captive and reintroduced populations (USFWS 2019, p. 65).

In Arizona, the USFWS and our partners refine management strategies and field techniques through adaptive management practices to enhance reintroduction efforts. For example, when ferrets did not appear to be breeding at Aubrey Valley after 5 years of releases, release strategies were modified to incorporate pen breeding and springtime releases, and wild-born kits were documented the following year (AZGFD 2016, p. 5). The USFWS also continually adapts and refines recommended plague monitoring and management. At Espee Ranch, for example, we learned that plague was present only after we released ferrets despite the use of pre-release plague surveillance and management protocols. Subsequently, AZGFD incorporated the latest disease monitoring protocols and adaptive management into its Management Plan (AZGFD 2016, p. 19, appendices E and F). In addition, at Espee Ranch, the USFWS and AZGFD participated in trials of the experimental SPV, the results of which have contributed to both the national effort to investigate SPV as a management tool as well as our understanding of local plague conditions. Given the USFWS's 31 years of experience reintroducing ferrets across their historical range, and the USFWS's and AZGFD's 26 years of experience in Arizona, developing and refining reintroduction and management techniques, we are likely to be successful in establishing and managing new populations of ferrets in the SWEPA.

Habitat Suitability

The likelihood of establishing ferret populations largely depends on adequate habitat. Although there was a significant decline of prairie dog occupied habitat on non-Tribal lands in Arizona historically, there has been a 10-fold increase in occupied habitat since 1961 (Seglund 2006, p. 16). Outside of Navajo and Hopi lands, Arizona currently has more than 108,000 ac (43,707 ha) of occupied prairie dog habitat (H. Hicks, AZGFD, pers. comm., January 26, 2018), a portion of which is located on lands of the Hualapai Tribe. Lands of the Navajo Nation and the Hopi Tribe collectively may contain about 250,000 ac (101,174 ha) of occupied prairie dog habitat (Johnson et al., 2010, p. iv). With purposeful management, this amount and distribution of prairie dog occupied habitat would be capable of supporting multiple ferret reintroduction sites.

In addition to the amount of habitat available in the SWEPA, individual reintroduction sites need to be of sufficient size to support reintroduced ferrets. Two sites in Arizona currently exceed or have exceeded the USFWS's and AZGFD's estimated Gunnison's prairie dog occupied acreage (7,415 ac [3,000 ha] and 5,540 ac [2,242 ha], respectively) to reintroduce ferrets: Aubrey Valley/Double O Ranch and Espee Ranch (AZGFD 2016, p. 6). In

2018, Aubrey Valley/Double O Ranch contained about 65,500 ac (26,500 ha) of occupied prairie dog habitat and 264,000 ac (106,850 ha) of potential acreage (USFWS 2019, table 3). In 2007, prior to ferret reintroduction, Espee Ranch contained approximately 29,000 ac (11,736 ha) of occupied prairie dog habitat. Ferret monitoring and prairie dog management and monitoring continue to occur at Aubrey Valley/Double O Ranch, and prairie dog management and monitoring continue to occur at Espee Ranch. In addition to these two established reintroduction sites, four potential reintroduction sites have been identified (AZGFD 2016, entire). AZGFD has a management plan to conserve and maintain viable prairie dog populations and the ecosystems they inhabit statewide (Underwood 2007, entire). The acreage area criteria, along with implementation of management plans for viable prairie dog populations and ferrets and their habitats, will ensure that any sites selected for reintroduction have sufficient quantity and quality of habitat to support establishment of ferret populations.

Additional occupied prairie dog habitat is necessary before ferrets are released at additional sites within the SWEPA. Ferret reintroduction sites are relatively large, and their management requires coordination with multiple partners. AZGFD and other partners are currently implementing activities to monitor and manage prairie dog habitat in potential reintroduction sites in support of future ferret reintroductions. This 10(j) rule will facilitate new partnerships with private landowners and encourage voluntary management of prairie dog habitat in anticipation of future ferret reintroductions by providing regulatory flexibility regarding incidental take associated with activities deemed compatible with ferret recovery (50 CFR 17.84(g)). The 10(j) rule will also allow for regulatory consistency across different land management agencies or authorities. For these reasons, we consider the SWEPA an important step toward increasing the number of ferret reintroduction sites and our contribution toward ferret recovery.

Increased Prey Stability

Prairie dog populations in Arizona have increased from historical lows in the 1960's, and the State is managing them for long-term viability. The potential for continued expansion of occupied prairie dog habitat across Arizona through prairie dog conservation and disease management, coupled with past success of ferret reintroductions in Arizona and across the species' range, suggests that ferret-occupied areas can expand through additional reintroductions and dispersal. Reintroduction of ferrets in the larger SWEPA will contribute to achieving the USFWS ferret Recovery Plan guidelines for Arizona and contribute to ferret recovery across the species' range (USFWS 2013a, p. 77).

Summary

The USFWS and our partners have considerable experience reintroducing ferrets rangewide and in Arizona. We have guidelines for selecting suitable reintroduction sites (USFWS 2013a, entire. pp. 73–74; USFWS 2016a, pp. 1–10; AZGFD 2016, p. 7) and developed protocols and management plans for those sites (USFWS 2016a, entire; AZGFD 2016, appendices). The SWEPA contains a sufficient quantity and distribution of habitat to support reintroductions at additional sites with continued and additional prairie dog management. Additionally, the causes of extirpation of ferrets in Arizona have been or are being addressed; the widespread poisoning of prairie dogs is no longer occurring, the USFWS and partners continue to develop plague management techniques, and the conversion of habitat into cropland is not occurring at a significant scale. Lastly, the demonstrated success of existing reintroduced ferret populations in Arizona indicates that additional reintroduction efforts in the SWEPA will be successful in establishing and sustaining additional ferret populations, required for species recovery.

Effects of the SWEPA on Recovery Efforts for the Species

The USFWS's recovery strategy for the ferret range-wide requires establishment of numerous, spatially dispersed populations of ferrets within the range of all three prairie dog species to reduce the risk of stochastic events affecting multiple populations (*e.g.,* plague), increase management options, and maintain genetic diversity (USFWS 2013a, table 7) (see ''Recovery, Captive Breeding and Reintroduction Efforts to Date'' above). Delisting criteria for the species include 30 populations in 9 of 12 States within the species' historical range and distributed among the ranges of 3 prairie dog species (USFWS 2013a, p. 6). To implement this recovery strategy and achieve recovery criteria, additional successful reintroductions of ferrets are necessary (USFWS 2013a, p. 7). We will accomplish this by encouraging new partnerships with landowners and managers and the voluntary purposeful prairie dog management needed to support ferret populations via regulatory flexibilities.

Participation by numerous partners is critical to achieve the ferret's delisting criteria of multiple spatially dispersed populations and support the species redundancy, representation, and resiliency necessary for recovery. To achieve this strategy, the Recovery Plan suggests recovery guidelines for each State within the historical range of the species for the number of ferrets and prairie dog habitat acreages (proportional to the historical amount of prairie dog habitat) to contribute to meeting recovery criteria (USFWS 2013a, p. 69). These recovery guidelines by State are intended to improve risk management and ensure equity of recovery responsibilities across State boundaries (USFWS 2013a, table 8). The USFWS collaborated with AZGFD, the Navajo Nation, the Hualapai Tribe, and private landowners to initiate one of the early ferret reintroduction sites and the first in a Gunnison's prairie dog population.

The USFWS's Recovery Plan downlisting and delisting criteria guidelines for Arizona are 74 free-ranging breeding adult ferrets on 17,000 ac (6,880 ha) of Gunnison's prairie dog occupied habitat, and 148 breeding adults on 34,000 ac (13,760 ha), respectively. The guidelines for New Mexico and Utah are 220 and 25 breeding adult ferrets for downlisting, respectively, and 440 and 50 breeding adults for delisting (USFWS 2013a, table 8). Delisting criteria for the entire range include five ferret populations in colonies of both Gunnison's and white-tailed prairie dogs (USFWS 2013a, p. 6). About 27 percent of the Gunnison's prairie dog range occurs in Arizona (Seglund et al. 2006, p. 70), so establishing additional ferret populations in Gunnison's prairie dog habitat within the SWEPA will contribute to meeting this criterion.

Currently, there are two established ferret reintroduction sites in Arizona. As of 2013, we considered the Aubrey Valley/Double O Ranch site one of the four most successful reintroduced populations throughout the species' range; it had a population that exceeded the recommended downlisting criteria for Arizona and we considered it self-sustaining (USFWS 2013a, pp. 5, 22, 77). However, the population declined appreciably, for which we suspect that plague may be the cause. Although plague has likely extirpated ferrets at the other established reintroduction site, Espee Ranch, efforts to control plague and restore habitat for ferrets continue. The SWEPA will include all potential ferret habitat in Arizona and on

participating Tribal lands, including Hualapai Tribal lands, a portion of Hopi Tribal lands, and Navajo Nation lands in Arizona, New Mexico, and Utah (see ''Experimental Population'' above). Establishing additional populations within the SWEPA will reduce the vulnerability of extirpation of the species. Additionally, the widely distributed reintroduction sites identified, and the potential for other reintroduction sites (*e.g.,* on the Navajo Nation) will reduce the effects of localized or stochastic events on overall recovery efforts, by reducing the likelihood that all individuals or all populations would be affected by the same event. Reintroducing viable ferret populations in the New Mexico and Utah portions of the Navajo Nation would not only aid in recovery of the species but also in meeting the Recovery Plan's recovery guidelines for those States (USFWS 2013a, p. 77).

The significant threat of plague to ferret populations emphasizes the need for several spatially dispersed reintroduction sites across the widest possible distribution of the species' historical range (USFWS 2013a, p. 70), supporting the value of a statewide approach to reintroductions. Establishment of the SWEPA will facilitate ferret reintroductions across a large geographic area and will result in establishment of several populations that will persist over time, thus, contributing to recovery of the species.

Actions and Activities That May Affect the Introduced Population

Classes of Federal, State, Tribal, and private actions and activities that may currently affect ferret viability, directly or indirectly, across the species' range are urbanization, energy development, agricultural land conversion, range management, and recreational shooting and poisoning of prairie dogs (USFWS 2019, p. 13). Actions and activities that affect prairie dogs may also indirectly affect ferrets, given the ferret's dependency on prairie dogs as a food source and their burrows for shelter.

In Arizona, land ownership within the range of Gunnison's prairie dog is approximately as follows: Tribal—49.05 percent; private—21.62 percent; Federal—16.80 percent; State—12.53 percent; city/county—0.01 percent (Seglund 2006, table 3).

Although urbanization may adversely affect local prairie dog colonies, effects across the range of the species in Arizona are not substantial due to the small amount of urban land, and the rural settings of the ferret reintroduction sites. Similarly, oil and gas and other types of mineral exploration and extraction development cover less than one percent of the prairie dog range in Arizona (Underwood 2007, p. 10), and this development is not associated with established or potential ferret reintroduction sites. Solar and wind energy development has expanded in recent years but also comprises a very small part of the landscape. In Arizona, most solar power facilities are located in the southern and far western part of the State, outside of the range of Gunnison's prairie dog (U.S. Energy Information Administration 2022, n.p.). To date, there have been a number of wind projects in the range of Gunnison's prairie dog, but none currently constructed within established or potential reintroduction sites, and the existing infrastructure of wind projects occupies less than 0.005 percent of the ferret's potential range (USFWS 2019, p. 40). As discussed above, agricultural development affects less than one third of one percent of the range of Gunnison's prairie dog (Seglund 2006, p. 16). We do not expect agricultural land conversion to have a measurable effect on the future condition of the ferret in Arizona based on a 20-year analysis (USFWS 2019, p. 56).

There are about 22 million ac (8,900,000 ha) of rangeland, used predominantly for grazing, in Arizona across Tribal, private, Federal, and State lands (USDA 2019, p. 19), and these lands represent potential habitat for both the prairie dog and ferret (Ernst et al. 2006, p. 91). Livestock grazing became a prominent activity on the Arizona landscape in the 1880s and peaked in intensity around the late 1890s and early 1900s (Milchunas 2006, p. 7). Grazing in arid and semiarid areas can alter species composition of plant communities, disrupt ecosystem functions, and alter ecosystem structure (Fleischner 1994, p. 631). Available literature reveals a wide range of potential effects of livestock grazing on ecosystems that vary with site-specific characteristics, including habitat type, grazing intensity, and history of grazing (Jones 2000, entire; Milchunas and Lauenroth 1993, entire; Milchunas 2006, entire).

Few studies have examined the effects of grazing on prairie dogs. Cheng and Ritchie (2006, p. 550) observed lower growth rates in Utah prairie dogs (*C. parvidens*) in plots treated to simulate grazing in a sagebrush steppe habitat. Conversely, forage in simulated grazed plots had higher nutrition and greater digestibility, and the prairie dogs showed preference for those patches (Cheng and Ritchie 2006, pp. 549–550). Ponce-Guevara et al. (2016, pp. 5, 7) found that black-tailed prairie dog populations increased in areas of a desert grassland where cattle grazing reduced woody encroachment. The potential for competitive effects of large grazing herbivores on prairie dog populations likely depends on site-specific factors, such as habitat productivity and herbivore densities (Cheng and Ritchie 2006, p. 554). Despite the potential for competition, prairie dogs remained prominent on rangelands in Arizona during the period of heaviest livestock grazing and did not begin declining until the time of systematic prairie dog eradication programs (Oakes 2000, pp. 169–171). This long history of prairie dog persistence with livestock grazing in Arizona and the persistence of ferrets at the AVEPA lead us to conclude that livestock grazing and ranching activities can be compatible with maintaining occupied prairie dog habitat capable of supporting ferrets.

Depending on intensity, recreational shooting of prairie dogs can negatively affect local prairie dog populations through direct fatality of individuals (Vosburgh and Irby 1998, entire; Keffer et al. 2001, entire; Knowles 2002, pp. 14–15). The resulting decrease in prey base negatively affects ferrets, and it is likely this activity could occur on ferret reintroduction sites (Reeve and Vosburgh 2006, entire). Recreational shooting reduces the number of prairie dogs in a colony, thereby decreasing prairie dog density (Knowles 1988, p. 54), occupied acreage (Knowles and Vosburgh 2001, p. 12), and reproduction (Stockrahm and Seabloom 1979, entire). Recreational shooting could also cause direct fatality to prairie dog-associated species such as ferrets (Knowles and Vosburgh 2001, p. 14; Reeve and Vosburgh 2006, pp. 120–121). Although we do not have documentation of incidental take of ferrets by prairie dog shooters, direct ferret fatality due to accidental shooting is possible. Lastly, recreational shooting of prairie dogs also contributes to the environmental issue of lead accumulation in wildlife food chains (Knowles and Vosburgh 2001, p. 15; Pauli and Buskirk 2007, entire). Killing large numbers of animals with lead bullets and not removing carcasses from the field may present potentially dangerous amounts of lead to scavengers and predators of prairie dogs, such as ferrets. We have not documented ferret ingestion of lead to date (USFWS 2013a, p. 28). To address these recreational shooting conservation issues, AZGFD implements prairie dog annual shooting closures on public lands from April 1 to June 30 to reduce potential effects on prairie dog

reproduction (USFWS 2019, p. 29). In addition, in the event of prairie dog population declines in an established reintroduction site for any reason, the AZGFD Commission may close prairie dog shooting until the population recovers (AZGFD 2016, p. 15).

Poisoning of prairie dogs has the potential to occur within both Gunnison's and black-tailed prairie dog habitat and can affect ferrets through loss of prey and inadvertent secondary poisoning for some poisons. In recent years, the extent of prairie dog poisoning has been closely regulated, limited in area, and confined to specific needs compared to historical poisoning. From 2013 through 2019 in Arizona, APHIS treated prairie dogs with zinc phosphide at three private properties, totaling 56 ac (23 ha) of colonies, for livestock and property protection on pasture and farmland near rural communities (C. Carrillo, pers. comm., APHIS, October 23, 2019). None of these treatments were in or near current or proposed ferret reintroduction areas.

Certain activities associated with prairie dog recreational shooting and poisoning have the potential to result in incidental ferret fatality. For example, use and establishment of roads within prairie dog and ferret habitat may result in ferret road kills and increase human access for prairie dog shooting (Gordon et al. 2003, p. 12). However, we have no information to suggest that incidental fatalities have a significant effect on ferret population viability.

When the USFWS established the AVEPA, we determined existing and foreseeable land use practices within the AVEPA to be compatible with sustaining ferret viability (61 FR 11320, March 20, 1996). These practices include grazing and related activities (including existing and foreseeable levels of prairie dog control), big game hunting, prairie dog shooting, and the trapping of furbearers and predators. Other land uses include transportation and rights-of-way (*e.g.,* for utilities). Our success in reintroducing ferrets in the AVEPA over 26 years supports that finding. Similarly, in the USFWS's establishment of the statewide nonessential experimental population of ferrets in Wyoming, we found that land use activities currently occurring across that State, primarily livestock grazing and associated ranch management practices, recreation, residential development, and mineral and energy development, are compatible with ferret recovery and that there is no information to suggest that foreseeable similar future activities would be incompatible with ferret recovery (80 FR 66821, October 30, 2015). Based on previous successes with other experimental ferret populations in areas influenced by similar land use activities and actions, including the AVEPA within Arizona, we conclude that the effects of Federal, State, Tribal, and private actions and activities will not pose a substantial threat to ferret establishment and persistence within the SWEPA and that SWEPA establishment will benefit the conservation of ferrets.

Experimental Population Regulation Requirements

Our regulations at 50 CFR 17.81(c) include a list of what the USFWS provides in regulations designating experimental populations under section 10(j) of the ESA. We explain what our regulations include and provide our rationale for those regulations below.

Means To Identify the Experimental Population

Our regulations require that we provide appropriate means to identify the experimental population, which may include geographic locations, number of individuals to be released, anticipated movements, and other information or criteria.

Identifying the Location and Boundaries of the SWEPA

The 40,905,350-ac SWEPA occurs in the State of Arizona and on sovereign lands of the Hopi Tribe, Hualapai Tribe, and the Navajo Nation, including Navajo Nation lands in New Mexico, and Utah (see ''Experimental Population'' above); we delineate the boundaries below in the figure titled ''Southwest Nonessential Experimental Population Area (SWEPA) for the ferret.'' These boundaries are based on various grasslands and parts of biotic communities in which grasslands are interspersed, with which prairie dogs are associated, including Plains and Great Basin Grassland, Great Basin Conifer Woodland, Great Basin Desertscrub, and Petrane Montane Conifer Forest biotic communities (AZGFD 2016, pp. 8–10) (Brown et al. 1979, entire), and represent a 184-fold increase in area from the AVEPA (USFWS 2021, p. 7, figure 2). State political subdivisions include portions of Apache, Cochise, Coconino, Gila, Graham, Mohave, Navajo, Pima, Pinal, Santa Cruz, and Yavapai Counties of Arizona; Cibola, McKinley, Rio Arriba, Sandoval, and San Juan Counties of New Mexico; and San Juan County, Utah.

The SWEPA consists of two separate areas: (1) northeast and northcentral Arizona, the southeast corner of Utah, and northwest New Mexico on the Navajo Nation, and (2) southeastern Arizona.

The SWEPA will encompass and replace the AVEPA. In addition, two areas enrolled in the programmatic SHA under certificates of inclusion, the Espee Allotment and Double O Ranch, are within the SWEPA. Although this experimental population designation can overlay SHAs, we contacted enrollees to assess interest in replacing their certificates of inclusion with the provisions of this 10(j) rule. We propose phasing out the SHA certificates of inclusion in the future for interested landowners. As a result, the USFWS would conduct future reintroductions of ferrets within the SWEPA under the experimental population designation regulation.

Number of Anticipated Ferret Releases

The number of ferrets released at a given reintroduction site depends on multiple variables and can vary extensively between sites. In the AVEPA, for example, the USFWS and AZGFD released 35 ferrets over 5 years without documenting wild reproduction, which is necessary for a site to become self-sustaining. We continued releasing ferrets until the population appeared to be self-sustaining. After 4 years, the population appeared to be faltering, and we resumed ferret releases. Over a span of 11 years, from 1996 to 2006, we released 354 ferrets at the AVEPA. After 2011, we released an additional 112 excess kits from breeding facilities into the AVEPA. We added 41 ferrets at the Double O Ranch over 4 years (2016–2019) for research purposes after ferrets from AVEPA naturally dispersed there. We released 99 ferrets at Espee Ranch over a span of 3 years (2007 to 2009). The USFWS recommends initially releasing up to 20 to 30 ferrets at new reintroduction sites in the SWEPA, with the total number of ferrets released across multiple years at new reintroduction sites likely similar to the established reintroduction sites in Arizona.

Actual or Anticipated Movements

Understanding ferret movement patterns and distances will ensure accurate identification of ferrets associated with the SWEPA. Researchers have documented newly released captive-born ferrets dispersing up to 30 miles (49 km) from the release site (Biggins et al. 1999, p. 125), and wild-born ferrets more than 12 miles (20 km) (USFWS 2019, p. 7). AZGFD documented ferrets up to 15 miles outside the AVEPA starting in 2012, 16

years after initial releases (J. Cordova, AZGFD, pers. comm., November 22, 2022).

While dispersal of ferrets depends on variables such as competition within a given population and the availability of adjacent habitat and prey, we would expect a pattern of ferret dispersal from new reintroduction sites in the SWEPA to be similar to those observed in the AVEPA. Outside of the SWEPA, the closest current reintroduced population of ferrets is Coyote Basin, Utah, which is about 200 mi (320 km) away, substantially greater than documented ferret dispersal distances. Therefore, we will consider any ferret found in the wild within the boundaries of the SWEPA to be part of the experimental population.

Reintroduction Sites

The USFWS recommends the establishment of at least five ferret reintroduction sites in the SWEPA to buffer against stochastic or catastrophic events and reliably meet Recovery Plan recovery guidelines (USFWS 2022a). Federal and State public lands in Arizona and Tribal and private lands currently support large expanses of grasslands with varying sizes of Gunnison's prairie dog colonies (AZGFD 2016, figure 1). Reintroduction sites may include those discussed below or additional sites where there are willing landowners and managers, and suitable prairie dog habitat exists.

Established Reintroduction Sites Within the SWEPA

(1) Aubrey Valley/Double O Ranch—The AVEPA encompasses 221,894 ac (89,800 ha) of private, Tribal, State, and Bureau of Land Management (BLM) managed lands and is located about 5 miles northwest of Seligman in Coconino, Yavapai, and Mohave Counties. The adjacent Double O Ranch encompasses 236,792 ac (95,828 ha) of private, State, and USFS managed lands south of the AVEPA. Together, these sites contain 264,016 ac (106,846 ha) of grasslands. AZGFD mapped an average of 52,455 ac (21,228 ha) of Gunnison's prairie dog colonies in the AVEPA between 2007 and 2016 (AZGFD 2016, p. 8) (H. Hicks, AZGFD, pers. comm., January 26, 2018). In 2014 and 2016, respectively, Gunnison's prairie dogs occupied 7,074 and 6,313 known ac (2,863 and 2,555 ha) on Double O Ranch (AZGFD 2016, p. 7; H. Hicks, AZGFD, pers. comm., January 26, 2018). Plague is likely present in the AVEPA.

(2) Espee Ranch—The Espee Allotment encompasses 145,644 ac (58,941 ha) of private and State lands about 17 miles northeast of Seligman, in Coconino County, Arizona. There are 139,255 ac (56,356 ha) of grasslands (AZGFD 2016, pp. 8–9). In 2007, prior to release of ferrets, approximately 29,000 ac (11,736 ha) of occupied prairie dog habitat was mapped (AZGFD 2007, p. 1). Since then, the number of prairie dog occupied acres has fluctuated greatly, with 3,228 occupied ac (1,306 ha) in 2014 and 21,771 occupied ac (8,811 ha) in 2018 (J. Cordova, AZGFD, pers. comm., August 18, 2022). Plague is present on the Espee Ranch and is the suspected reason for the lack of recent ferret observations despite multiple releases.

Potential Reintroduction Sites Within the SWEPA

The four areas described below do not currently meet the minimum necessary Gunnison's prairie dog occupied acreage to support ferrets. However, active management, such as translocations of prairie dogs, and dusting for plague or administration of a plague vaccine, along with annual monitoring of prairie dog populations, may provide for the needed acreage of occupied prairie dog habitat in these areas (AZGFD 2016, p. 9).

(1) Kaibab National Forest, Williams/Tusayan Ranger Districts—These areas cover over 613,000 ac (248,078 ha) of USFS, Department of Defense, private, and State managed lands surrounding the city of Williams in Coconino and Yavapai Counties. There were 96,954 ac (39,237 ha) of grasslands with 4,984 ac (2,017 ha) of known Gunnison's prairie dog occupied area in 2015 (AZGFD 2016, p. 9).

(2) CO Bar Ranch—This ranch encompasses 263,758 ac (106,741 ha) of private, State, BLM, and Tribal lands and is located about 24 miles north of Flagstaff in Coconino County. There were 184,815 ac (74,794 ha) of grasslands with 870 ac (352 ha) of known Gunnison's prairie dog occupied area in 2015 (AZGFD 2016, p. 9).

(3) Petrified Forest National Park—This area encompasses 223,027 ac (90,258 ha) of NPS, State, Tribal, BLM, and privately managed lands east of Holbrook in Navajo and Apache Counties. There were 214,135 ac (86,659 ha) of grasslands with 87 ac (35 ha) of known Gunnison's prairie dog occupied area in 2015 (AZGFD 2016, p. 10).

(4) Lyman Lake—This area encompasses 316,958 ac (128,271 ha) of private, State, AZGFD, BLM, and USFS lands south of St. Johns in Apache County. There were 273,227 ac (110,573 ha) of grasslands with 2,045 ac (828 ha) of known Gunnison's prairie dog occupied area in 2015 (AZGFD 2016, p. 10).

Black-tailed prairie dog habitat exists in southeastern Arizona (Cockrum 1960, p. 76; figure 1). In 2008, the AZGFD reintroduced this species into a small portion of its historical range via translocations from wild populations in New Mexico (W. Van Pelt, AZGFD, pers. comm, July 6, 2022). This new black-tailed prairie dog population occurs on the BLM-administered Las Cienegas National Conservation Area. Surveys in 2021 estimated that a minimum of 210 black-tailed prairie dogs occupied 28 ac (11.3 ha) (J. Presler, AZGFD, pers. comm., February 7, 2022). It would likely take many years to reach enough black-tailed prairie dog occupied acreage with a stable population to support a reintroduction of ferrets. However, efforts to expand black-tailed prairie dog colony acreage would offer opportunities to re-create habitat for ferrets (USFWS 2013a, p. 51).

We will consider reintroduction sites on Tribal Lands if Tribes are interested and where suitable prairie dog habitat exists. Forty-nine percent of the land within the range of Gunnison's prairie dog in Arizona is under Tribal ownership (Seglund et al. 2006, table 3). The Navajo Nation is the largest owner of Gunnison's prairie dog habitat (Johnson et al. 2010, p. 6). Working with the Hopi Tribe, Hualapai Tribe, and Navajo Nation, we may be able to identify other potential sites for ferret reintroduction on their Tribal sovereign lands. All three Tribes have expressed interest in working with the USFWS in ferret recovery (J. Nystedt, USFWS, pers. comm., March 23, 2022; Navajo Nation 2017, entire; D. Clarke, Hualapai Tribe, pers. comm., March 26, 2018; Hopi Tribe 2021, entire). The Hualapai and Hopi reservations and Hopi-owned ranches coincide entirely with Arizona (*i.e.,* their lands are wholly within the borders of the State), whereas the Navajo Nation also coincides with parts of the States of New Mexico and Utah, within which the Navajo Nation has sovereign authority to manage wildlife.

Surveys of prairie dog populations on Tribal lands, in addition to other information such as incidence of plague, are needed as part of the process of considering these lands for ferret reintroduction. The Navajo Nation and Hopi Tribe, in collaboration with Natural Heritage New Mexico, conducted a remote survey of Gunnison's prairie dogs on the lands of both Tribes in 2010. The technique used, involving standard photo-interpretation to identify disturbance in potential habitat on digital orthophoto quarter quads, estimated the total area of occupied Gunnison's prairie dog habitat on the Navajo Nation and Reservation of

the Hopi Tribe at 253,562 ac (102,615 ha) (Johnson et al. 2010, pp. iv, 18).

The Navajo Nation recently received a USFWS Tribal Wildlife Grant to investigate areas for future ferret reintroductions, including prairie dog habitat mapping, disease monitoring, and development of a ferret reintroduction plan for the Navajo Nation. As mentioned previously, we originally included some lands of the Hualapai Tribe and deeded lands owned by the Navajo Nation when we designated the AVEPA, and the Tribes have worked cooperatively with the USFWS and AZGFD on ferret recovery. The Hopi Tribe has expressed interest in ferret recovery activities on a portion of their lands, including ranches and part of their Reservation. They requested excluding District 6 of their Reservation, so we have excluded that area from the SWEPA.

Is the experimental population essential or nonessential?

When we establish experimental populations under section 10(j) of the ESA, we must determine whether such a population is essential to the continued existence of the species in the wild. This determination is based solely on the best scientific and commercial data available. Our regulations state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild (50 CFR 17.80(b)). All other populations are considered nonessential.

The ESA states that, prior to any release ''the Secretary must find by regulation that such release will further the conservation of the species'' (49 FR 33893, August 27, 1984). Reintroductions are, by their nature, experiments, the fate of which is uncertain. However, it is always our goal for reintroductions to be successful and contribute to recovery. The importance of reintroductions to recovery does not necessarily mean these populations are ''essential'' under section 10(j) of the ESA. In fact, Congress' expectation was that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835 supra at 34; 49 FR 33888, August 27, 1984). The preamble to our 1984 publication of ESA 10(j) implementing regulations reflects this understanding, stating that an essential population will be a special case, and not the general rule (49 FR 33888, August 27, 1984).

In our final rule establishing the nonessential experimental population in Aubrey Valley, the USFWS found the AVEPA to be ''nonessential'' because the captive-breeding population is both the secure source for all reintroductions, and the primary repository of genetic diversity for the species (61 FR 11320, March 20, 1996). We considered all reintroduced ferrets to be in excess to the captive population, and we could replace any deceased reintroduced animals through captive breeding (61 FR 11323, March 20, 1996).

The USFWS did not anticipate changing the nonessential designation for the AVEPA unless the experiment failed or until the ferret recovered (61 FR 11323, March 20, 1996). However, because this final rule will replace the AVEPA through incorporation into the SWEPA, an evaluation as to whether the new SWEPA experimental population is essential to the continued existence of the species in the wild is appropriate.

As discussed above, we expect the SWEPA to further the conservation of the species by contributing to the establishment of multiple, widespread populations that will persist over time and contribute to achieving recovery goals for the species. However, we consider the SWEPA nonessential because there are now a number of reintroduced ferret populations in the wild, across the range of the species. There are 18 active reintroduction sites across the ferret's historical range (J. Hughes, USFWS, pers. comm., December 13, 2021), consisting of a minimum of 340 ferrets in 2018, with a minimum of 254 at the 4 most successful reintroduction sites (Rocky Mountain Arsenal National Wildlife Refuge, Colorado; Conata Basin/Badlands, South Dakota; and Shirley Basin and Meeteetse, Wyoming) (USFWS 2019, table 3). In the black-footed ferret SSA (USFWS 2019, pp. 43–83), we used the conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, entire) to assess how the populations at the active sites contribute to the current and future species condition to address the ferret's viability in the wild across its range.

Resiliency indicates a population's ability to withstand environmental and demographic stochasticity. We assessed the resiliency of each ferret population across the species' range based on the 5-year mean number of breeding adults, habitat suitability, annual plague management, annual ferret vaccinations, ferret population persistence, and level of prairie dog conservation. Of the 14 sites active at the time of our assessment, we considered 2 in high-resiliency condition and 8 in moderate-resiliency condition (USFWS 2019, table 11). We estimated that in 20 years, if management and threats remain at current levels, the two high-resiliency populations will remain in that condition, seven of the eight moderate-resiliency populations will remain in that condition, and one of the moderate-resiliency populations will become low-resiliency.

Redundancy is the ability of a species to withstand catastrophic events, via the number and distribution of populations. Representation, or ecological or genetic diversity across a species' range, enables a species to better respond to changes in the environment. Current and future high- and moderate-resiliency populations occur in the wild across six States, including Wyoming, South Dakota, Kansas, Colorado, Utah, and Arizona. This broad distribution of ferret populations across the Western United States protects against catastrophic events affecting all wild ferret populations simultaneously, and it allows for a variety of physical and biological conditions in which the species may express adaptive capacity going forward. Additionally, captive-breeding efforts continue to support the establishment of more populations throughout the species' range. Loss of the SWEPA would not affect these remaining populations of ferrets in the wild.

The current ferret population in Arizona, while contributing incrementally to conservation in concert with other sites, is a relatively small portion of the total number and distribution of ferret populations needed for species recovery. The Recovery Plan's delisting criteria for ferrets calls for 30 or more populations, with at least 1 population in each of at least 9 of 12 States within the historical range of the species, and at least 5 populations within colonies of Gunnison's and white-tailed prairie dogs. About 27 percent of Gunnison's prairie dog range occurs in Arizona. This equates to about 9 to 14 percent of all prairie dog occupied habitat (*i.e.,* the range of all 3 prairie dog species) (USFWS 2013a, p. 24). In Arizona, the relative recommended contribution of habitat to ferret delisting is about seven percent (USFWS 2013a, table 8, p. 77).

The SWEPA will further the recovery of the ferret by allowing us to establish multiple wild populations within the species' historical range. We conclude that the loss of all reintroduced ferrets within the SWEPA is not likely to appreciably reduce the likelihood of survival of the species in the wild due to maintenance of the captive population for additional reintroductions into the wild, the number of reintroduction sites and

established populations rangewide, and the expected incremental contribution of Arizona to the recovery of the ferret. Furthermore, the SWEPA covers a relatively small portion of potential ferret habitat rangewide: about seven percent; thus, the potential size of the experimental population within the SWEPA will be small relative to the potential number of ferrets rangewide. Therefore, as required by 50 CFR 17.81(c)(2), we determine the SWEPA experimental population is not essential to the continued existence of the species in the wild, and we designate the SWEPA experimental population as nonessential.

Management Restrictions, Protective Measures, and Other Special Management

We are applying the experimental population designation and regulations to the entire SWEPA; thus, a single set of statutes and regulations and a single management framework will apply to all non-Federal and Federal lands containing potential ferret habitat within the designated SWEPA boundary. This approach will extend regulatory assurances to all areas where ferrets could potentially establish, including the current properties covered by the SHA. There are no significant differences between the terms and conditions of the SHA and 10(j) regulations in terms of how landowners operate their ranches with respect to ferret recovery.

The USFWS will undertake SWEPA reintroductions in cooperation with current and future partners. Existing management plans or those that wildlife managers develop in cooperation with us and other partners and stakeholders will guide management of ferret populations in the SWEPA (*e.g.,* USFWS 2016a, AZGFD 2016).

As discussed in the ''*Actions and Activities that May Affect the Introduced Population,*'' Federal, State, Tribal, and private actions will not pose a substantial threat to ferret establishment and persistence in the SWEPA because land management activities, such as agricultural land conversion, recreational shooting of prairie dogs, poisoning of prairie dogs, urbanization, and energy development, currently occurring or anticipated to occur at prospective reintroduction sites in Arizona are very limited in scope. In addition, as discussed in ''*Addressing Causes of Extirpation within the Experimental Population Area*'' above, due to the low demand for and regulatory restrictions on prairie dog poisoning, we do not anticipate any change in prairie dog control efforts that would reduce prairie dog occupied habitat to the extent that they would compromise the viability of any potential ferret population. The best available information indicates that future range and ranching activities will remain compatible with ferret recovery because they do not limit essential ferret behavior such as feeding, breeding, or sheltering. We base this assessment on 26 years of ferret reintroductions and management at the AVEPA and Espee and Double O Ranches in Arizona, and at other reintroduction sites throughout the range of the species (80 FR 66826, October 30, 2015).

The AZGFD, BLM, USFS, NPS, Tribes, and private landowners manage sites with high potential for ferret establishment, and these areas receive protection through the following legal mechanisms:

Legal Mechanisms

(1) Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. 1701 *et seq.*)—The BLM's mission is set forth under the FLPMA, which mandates that the BLM manage public land resources for a variety of uses, such as energy development, livestock grazing, recreation, and timber harvesting, while protecting the natural, cultural, and historical resources on those lands. The BLM manages listed and sensitive species under guidance provided in the BLM Manual Section 6840—Special Status Species Management. The Manual directs the BLM to conserve ESA-listed species and the ecosystems upon which they depend, ensure that all actions authorized or carried out by the BLM comply with the ESA, and cooperate with the recovery planning and recovery of listed species. The BLM has experience in managing the ferret at four reintroduction sites in four States that occur at least in part on BLM lands. Therefore, we anticipate appropriate management by the BLM on future ferret reintroduction sites that include BLM lands.

(2) National Forest Management Act of 1976, as amended (16 U.S.C. 1600 *et seq.*)—This law instructs the USFS to strive to provide for a diversity of plant and animal communities when managing USFS lands. The USFS identifies species listed as endangered or threatened under the ESA, including the ferret, a Category 1 species at risk based on rangewide and national imperilment. The USFS has experience managing the ferret on one reintroduction site that occurs at least in part on USFS lands. Therefore, we anticipate appropriate management by the USFS on future ferret reintroduction sites that include USFS lands.

(3) Organic Act of 1916, as amended (16 U.S.C. 1–4)—This law requires the NPS to conserve National Park resources, consistent with the established values and purposes for each park. In addition, the Organic Act instructs the NPS ''to conserve the scenery and the natural and historical objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' NPS management policies require them to conserve ESA-listed species and to prevent detrimental effects on these species. The NPS has experience managing the ferret at two National Parks in South Dakota, where the NPS protects ferrets and their habitats from large-scale loss or degradation, per their mandate. Management of these reintroduction sites would need to continue regardless of the species' listing status. Therefore, we anticipate appropriate management by the NPS on any future ferret reintroduction sites that include NPS lands.

(4) Navajo Nation Law—Navajo Nation Code (NNC), title 17, chapter 3, subchapter 21, provides protections for ferrets. Title 17 NNC section 507 makes it unlawful for any person to take wildlife on either of the following lists, as quoted from the code:

(a) ''The list of wildlife indigenous to the Navajo Nation that they determine to be endangered by regulation of the Resources Committee of the Navajo Nation Council.'' The Navajo Nation added the ferret to this list pursuant to Resources Committee Resolution RCF–014–91.

(b) The U.S. lists of endangered native and foreign fish and wildlife, as set forth in section 4 of the Endangered Species Act of 1973 as endangered or threatened species, to the extent that the Resources Committee adopts these lists. Navajo Nation Code (17 NNC section 504) also makes it unlawful for any person to take or possess a fur-bearing animal, which includes ferrets by definition (17 NNC section 500), except as permitted by the Director, Navajo Nation Department of Fish and Wildlife.

(5) Hopi Tribal Law—Tribal Ordinance 48 (Wildlife) documents the Tribe's exclusive jurisdiction to regulate and adjudicate all matters pertaining to wildlife found on the Hopi Reservation. All wildlife found on the Reservation, whether resident or migratory, native or introduced, is the property of the Hopi Tribe, and Tribal Law provides the times and manner of allowable take.

(6) Arizona State Law—General provisions of Arizona Revised Statutes, title 17, protects all of Arizona's native wildlife, including federally listed threatened and endangered species.

(7) Endangered Species Act—The ESA will continue to provide protection to ferrets in the SWEPA through section 10 by requiring certain management entities to obtain an enhancement of survival permit from the USFWS under section 10(a)(1)(A) for any intentional taking of a ferret that is prohibited by section 9 of the ESA and not exempted through this rule. The authorities of section 6 of the ESA and 50 CFR 17.21, 17.31, and 17.84(g) cover AZGFD's management activities. Section 7(a)(1) of the ESA also requires all Federal agencies to use their authorities to further the purposes of the ESA.

Other Protections and Management Restrictions

Other protections and management restrictions and measures in the SWEPA include:

(1) Incidental take: ESA 10(j) experimental population rules contain specific prohibitions and exceptions regarding take of individual animals. These rules are compatible with most routine human activities in the expected reestablishment area. Section 3(19) of the ESA defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Under 50 CFR 17.3, ''harass'' means an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns that include, but are not limited to, breeding, feeding, or sheltering. And ''harm'' means an act that actually kills or injures wildlife, including significant habitat modification that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. The regulations further define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. This nonessential experimental population designation rule will allow most incidental take of ferrets in the experimental population area, provided the take is unintentional and not due to negligent conduct. However, if there was evidence of intentional take, we would refer the matter to the appropriate law enforcement entities for investigation. This is consistent with regulations for areas currently enrolled in the SHA and in the AVEPA where we do not allow intentional take.

(2) Special handling: In accordance with 50 CFR 17.21(c)(3), any employee or agent of the USFWS or of a State wildlife agency may, in the course of their official duties, handle ferrets to aid sick or injured ferrets, salvage dead ferrets, and conduct other activities consistent with 50 CFR 17.84(g), their section 6 work plan, and 50 CFR 17.31. Employees or agents of other agencies would need to acquire the necessary permits from the USFWS for these activities.

(3) Arizona promulgation of regulations and other management for the conservation of the ferret as well as other species that, in turn, would benefit ferret recovery: For example, the AZGFD includes the ferret on the Species of Greatest Conservation Need Tier 1A (AZGFD 2012, p. 216). The list provides policy guidance on management priorities only, not legal or regulatory protection. The State also implements annual prairie dog shooting closures on public lands from April 1 to June 30.

(4) Coordination with landowners and managers: We discussed this rule with potentially affected State and Federal agencies, Tribes, local governments, private landowners, and other stakeholders in the SWEPA. These agencies and landowners and managers have indicated either support for, or no opposition to, this revision to the AVEPA. In advance of our developing the original rule for AVEPA, the AZGFD determined that designation of a nonessential experimental population was necessary to achieve landowner support to make a ferret reintroduction project viable (AZGFD 2016, p. 2; 61 FR 11325, March 20, 1996). To receive the same public support for their Management Plan, the AZGFD recommended expanding the AVEPA (AZGFD 2016, p. 2). Following consideration of their recommendation, we coordinated with AZGFD and the Navajo, Hopi, and Hualapai Tribes to develop the SWEPA.

(5) Public awareness and cooperation: We informed the public of the importance of the SWEPA for the recovery of the ferret through the proposed rule and requested public comment. The replacement of the AVEPA to establish the SWEPA under section 10(j) of the ESA as a nonessential experimental population increases reintroduction opportunities and provides greater flexibility in the management of the reintroduced ferret. The nonessential experimental population designation will facilitate cooperation of the State, Tribes, private landowners, and other interests in the affected area.

(6) Potential effects to other species listed under the ESA: There are four federally listed species with distributions that overlap the SWEPA and with habitat requirements that could overlap the grassland habitats that support prairie dogs (table 1). However, we have not documented any of these species in current or potential ferret reintroduction sites and/or these species are unlikely to occur or compete with ferrets for resources. We do not expect ferret reintroduction efforts to result in adverse effects to these species.

TABLE 1—FEDERALLY LISTED SPECIES IN THE SWEPA

Species	Current status in Arizona under the ESA
Mexican wolf (*Canis lupus baileyi*).	Nonessential experimental.
California condor (*Gymnogyps californianus*).	Nonessential experimental, Endangered.
Northern aplomado falcon (*Falco femoralis septentrionalis*).	Nonessential experimental.
Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*).	Endangered.

Measures To Isolate or Contain the Experimental Population From Nonexperimental Populations

There are no naturally occurring wild populations of ferrets. Outside of reintroduced populations, the ferret is extirpated throughout its historical range, including in Arizona, New Mexico, and Utah (USFWS 2017, entire) (see ''*Historical Range*'' above). Therefore, we do not need any measures to isolate or contain reintroduced ferrets in the SWEPA from other populations of black-footed ferret.

Review and Evaluation of the Success or Failure of the SWEPA

Monitoring is a required element of all ferret reintroduction projects. Reintroduction projects will conduct the three following types of monitoring:

(1) Reintroduction Effectiveness Monitoring: Reintroduction partners will monitor ferret population demographics and potential sources of fatality, including plague, annually for 5 years following the last release using spotlight surveys, snow tracking, other visual survey techniques, or possibly radiotelemetry of some individuals following AZGFD's Management Plan and the USFWS's Operations Manual (USFWS 2016a, pp. 25–59) or similar procedures identified in a management plan developed for a specific reintroduction site. Thereafter, partners

will complete demographic surveys periodically to track population status. Surveys will incorporate methods to monitor breeding success and long-term survival rates, as appropriate. The USFWS anticipates that AZGFD, Tribes, and/or other participating partners will conduct monitoring, and they will include monitoring results in their annual reports.

(2) Donor Population Monitoring: We will acquire ferrets from the captive-breeding population or from another viable reintroduction site. The USFWS and our partners manage ferrets in the captive-breeding population in accordance with the AZA SSP® (Graves et al. 2018, entire). The AZA SSP® Husbandry Manual provides up-to-date protocols for the care, propagation, preconditioning, and transportation of captive ferrets, and all participating captive-breeding facilities use it.

The USFWS may translocate ferrets from other reintroduction sites, provided their removal will not negatively affect the extant population, and appropriate permits are issued in accordance with current regulations (50 CFR 17.22) prior to their removal. Population monitoring, following any removals for translocation, will occur under guidance of the USFWS-approved management plan for the donor site.

(3) Monitoring Effects to Other Listed Species and Critical Habitat: We do not expect adverse effects to other federally listed species or critical habitat (see ''*Other Protections and Management Restrictions*'' number 6, above).

Findings

Based on the above information and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing ferrets into the SWEPA will further the conservation of the species and that these reintroduced populations are not essential to the continued existence of the species in the wild.

Summary of Changes From the Proposed Rule

Below, we highlight some of the changes made in the preamble to this final rule as a result of comments and additional analysis:

- Added information that suggests that reductions in prairie dog numbers and fitness may contribute to plague epizootics (see ''Threats/Causes of Decline'' above).
- Added the number of new reintroduction sites we intend to establish in the SWEPA (see ''Experimental Population'' above).
- Edited and added information in our discussion about the effects of grazing on prairie dogs to emphasize the complexity of the interactions and the site-specific variation of effects (see ''How Will the Experimental Population (SWEPA) Further the Conservation of the Species?'' above).
- Added information about the resiliency, redundancy, and representation of the ferret from the SSA to further support our experimental population designation of nonessential (see ''How Will the Experimental Population (SWEPA) Further the Conservation of the Species?'' above).
- Clarified language associated with the minimum occupied prairie-dog acreage for Gunnison's prairie dogs related to ferret reintroductions (see ''Experimental Populations'' above).

This final rule also incorporates minor, non-substantive clarifying edits (*e.g.,* citation clarification, resolution of numerical or other inconsistencies, etc.) and the incorporation of additional information based on the public and peer review comments we received. However, the information we received during the comment period for the proposed rule did not change our findings or the species-specific regulations that apply to this experimental population of ferrets.

Summary of Comments and Recommendations

In the proposed rule published on June 25, 2021 (86 FR 33613), we requested that all interested parties submit written comments on the proposal by August 24, 2021. In addition, in accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and updated guidance issued on August 22, 2016 (USFWS 2016b, entire), we solicited peer review of our proposed rule from six knowledgeable individuals with scientific expertise in ferret ecology and management. We received responses from four peer reviewers. We also contacted appropriate Federal and State agencies, Tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposal.

We reviewed all comments received from the public, States, Tribes, and peer reviewers for substantive issues and new information regarding the revision of an experimental population of ferrets in Arizona. Substantive comments are addressed in the following summary and have been incorporated into the final rule as appropriate.

Summary of Comments

Comment: One peer reviewer commented that we should include literature suggesting that other factors that reduce prairie dog numbers and fitness (*e.g.,* grazing, shooting, poisoning, and drought) may contribute to triggering a plague epizootic.

Response: We added text and cited additional literature accordingly (see ''Threats/Causes of Decline'' above).

Comment: Two peer reviewers suggested that we update the text to incorporate recent research on SPV.

Response: We added text and cited an additional study accordingly (see ''Recovery, Captive Breeding, and Reintroduction Efforts to Date'' above).

Comment: One peer reviewer and several commenters asked us to elaborate as to why we consider the reintroduction in the AVEPA successful, considering the recent decline in ferret numbers. Three commenters specifically expressed concerns that current land use practices and drought may have influenced the recent declines in the AVEPA.

Response: The population in the AVEPA increased to a minimum of 123 ferrets in 2012, and the population continues to persist following the subsequent decline. Because land management activities have been relatively consistent in the AVEPA since the first reintroduction in 1996, we conclude that those activities are unlikely to have caused the declines we observed in the AVEPA after 2012. Based on positive tests for plague in the area, plague is the most probable cause for the declines. Plague remains the most significant challenge to ferret population resiliency rangewide, and we will continue to require multiple management tools to lessen its effects on ferret populations. Accordingly, we expect the number of ferrets in each population to fluctuate over time, decreasing during plague outbreaks and increasing when plague is effectively controlled at a site. This scenario emphasizes the importance of having multiple, widely spaced populations to safeguard the species from the widespread chronic effects of plague as well as other periodic or random disturbances that may result in decreased population size or the loss of a population in one or more given areas.

Comment: Several commenters requested that we expand the experimental population area to include all of New Mexico, because potential habitat occurs there. Another commenter inquired about our inclusion of a portion of New Mexico.

Response: The proposed 10(j) rule included only portions of New Mexico that coincide with Navajo Nation lands. We have clarified this point in the final rule text. We developed the proposed

boundary of the SWEPA in close coordination with our partners in Arizona—AZGFD, the Navajo Nation, the Hualapai Tribe, and the Hopi Tribe—to include the areas for which they would manage the field operations of a reintroduced ferret population. We acknowledge that there are other areas in New Mexico, and throughout the ferret's historical range, that may provide new reintroduction opportunities. Legal mechanisms are available to support ferret reintroductions at these sites, including, for example, the 2013 rangewide programmatic SHA and proposal of additional experimental populations under section 10(j). We will identify and apply the appropriate mechanism to reintroduce ferrets on a site-specific basis after close coordination with partners in those areas.

Comment: Two commenters stated that the expansion of the experimental population over such a large area is unnecessary, because that larger area is not needed to meet the guidelines for Arizona specified in the ferret Recovery Plan. One commenter stated that the successful reintroduction at Aubrey Valley resulted in a ferret population in 2012 that exceeded the number of ferrets in the recovery guidelines for Arizona. The other commenter stated that the amount of prairie dog habitat in the AVEPA currently exceeds the amount of habitat in the recovery guidelines for Arizona.

Response: We provided State-specific guidelines in the rangewide Recovery Plan to assist planning needs and encourage broader recovery support across the ferret's historical range. The Recovery Plan states that the downlisting or delisting criteria may be fulfilled if they are met by some configuration other than that in the State-specific guidelines. Moreover, while we have acknowledged the success in Aubrey Valley, the recent decline in the ferret population at that site emphasizes the importance of having multiple, widely distributed populations to safeguard the species from the widespread chronic effects of plague as well as other periodic or random disturbances that may result in the loss of a population in one or more given areas. Establishing additional ferret populations in Arizona will help to ensure Arizona's contribution to the species' recovery over the long term.

Comment: One commenter was concerned that, by not explicitly identifying any specific suitable areas in the proposed rule, the proposed SWEPA is likely including more acreage than necessary for reintroduction.

Response: The SWEPA includes habitats associated with prairie dogs; that is, various grasslands and biotic communities in which grasslands are interspersed. We acknowledge that the entire SWEPA does not consist entirely of habitat suitable for ferrets, and we will reintroduce ferrets only into areas that meet the criteria for reintroductions. In addition to the two active reintroduction areas in the SWEPA, there are four potential reintroduction areas, which will require active management before they can support a ferret population. In addition to these sites, we may identify other reintroduction sites in the SWEPA in the future. Furthermore, the SWEPA includes areas into which ferrets could potentially disperse from a reintroduction site; inclusion of these areas provides regulatory certainty to the landowners and managers in those potential dispersal areas.

Comment: One commenter was concerned that the large area of the proposed SWEPA will mean that ferrets may be introduced anywhere in that area but will not receive actual protections of the ESA.

Response: We have determined that establishing the proposed SWEPA is necessary to achieve widespread landowner support for viable ferret reintroduction projects in Arizona. The biggest hurdle to securing support of ferret reintroductions is overcoming partner fear of liability associated with section 9 prohibitions on take under the ESA. Relaxing section 9 incidental take prohibitions through the flexibilities afforded via section 10(j) of the ESA will facilitate ferret reintroductions throughout the species' range in Arizona. Based on ferret reintroductions at Aubrey Valley/Double O Ranch, existing land use practices can be compatible with ferret recovery. Section 9 prohibitions of the ESA will still apply to intentional or negligent conduct that results in take.

Comment: Four commenters discussed the effects of ferret reintroductions on cattle grazing. Two commenters expressed concern that managing landscapes for ferrets, specifically prairie dog habitat, in other areas has resulted in poorly managed, less resilient ecosystems and are concerned about this happening in the SWEPA, especially in conjunction with drought as an additional stressor. One commenter extended this concern to grazing wildlife in addition to livestock.

Response: Prairie dogs, an important component of grassland ecosystems, are native to the area included within the proposed SWEPA. Managing for prairie dog colonies within the SWEPA will potentially restore beneficial ecosystem functions in managed areas. Prairie dogs positively affect ecosystem processes, resulting in increased soil mixing and nitrogen levels, for example, and affect vegetation composition, resulting in increased habitat heterogeneity on the landscape (Kotliar 1999, p. 178). Research has associated increases in plant nutritional levels and digestibility with prairie dog colonies (Detling and Whicker 1987, pp. 24–25). Livestock grazing occurs in and adjacent to the two established reintroduction sites in Arizona and has been compatible with ferret recovery. Future reintroduction sites will be selected based on their potential to support ferret reintroductions. Landowner and manager participation in activities directed at improving or maintaining habitat capable of supporting a ferret population is strictly voluntary. Prior to a ferret reintroduction, we will work with our partners to conduct outreach to landowners and affected stakeholders. AZGFD has a history of developing good working relationships with the livestock industry, notably landowners of the Aubrey Valley/Double O and Espee Ranch reintroduction sites, to initiate ferret reintroductions and conduct ongoing monitoring and maintenance at those sites.

Comment: One commenter expressed concern that, although agricultural crops do not represent a significant portion of the proposed SWEPA, management for prairie dog colonies could have negative effects on lands used for growing crops.

Response: We, in collaboration with our partners, identify potential reintroduction sites where there is landowner interest, and where current or desired land use practices are compatible with ferrets. Participation is voluntary. If reintroduced ferrets disperse from a reintroduction site, the 10(j) designation will allow for incidental take of ferrets (*e.g.,* take that could happen from livestock grazing, farming, prairie dog control) in those additional areas in the SWEPA. We, in collaboration with our partners, would coordinate with landowners and managers affected by dispersing ferrets about available options, including voluntary participation in ferret recovery or potential removal of the ferrets from their land.

Comment: One commenter thought it seemed unwarranted to include the area in southeastern Arizona in the SWEPA at this time, because the population of prairie dogs in that area is not native, and it will take many years to establish a stable prairie dog population large

enough to support the reintroduction of ferrets in this area.

Response: According to Hoffmeister (1986, p. 194), black-tailed prairie dogs are native to southeastern Arizona and occurred there until approximately 1938. We added this reference to the text within the rule (see ''Biological Information'' above). AZGFD reintroduced black-tailed prairie dogs in southeastern Arizona and manages those reintroductions. Though these prairie dog populations are currently too small to support a ferret population, we included the black-tailed prairie dog historical range in southeastern Arizona in the proposed SWEPA to increase opportunities for potential future ferret reintroductions.

Comment: One commenter pointed out that we state the total number of reintroduction sites as both 29 and 30 in different places in the proposed rule.

Response: We currently consider the Conata Basin/Badlands as 1 site; thus, we referenced 29 reintroduction sites in the proposed rule. In another place in the proposed rule, we inadvertently counted the Conata Basin/Badlands site as two sites. We initiated two additional reintroduction sites in 2021 that we had not included in the proposed rule. We thus modified the text in this final rule to state the number of currently active sites as 31.

Comment: One commenter stated that our determination that enzootic plague caused the ferret declines in the AVEPA is not wholly accurate and asked us to remove the reference to plague as the cause of the decline until we have information that is more conclusive.

Response: The ferret population in the AVEPA was increasing through 2012 when 123 breeding adults were documented. However, following 2012, the population has declined, despite consistent site management practices. Because of this and the recent detection of plague in coyotes and badgers in the Aubrey Valley, plague is the most likely cause of ferret decline in the AVEPA.

Comment: AZGFD requested that we include that the primary purpose of some of the ferrets released in Aubrey Valley was to place excess kits from propagation facilities, and the primary purpose for the ferrets we released at Double O Ranch was for research purposes. *Response:* We adjusted the text accordingly in this final rule (see ''Experimental Population Regulation Requirements'' above).

Comment: One commenter asked about benefits to landowners that participate in ferret reintroductions and specifically asked about financial compensation. Another commenter expressed that financial compensation to participating landowners would improve the ferret reintroduction program.

Response: While the 10(j) rule does not describe a specific plan to compensate participating landowners, governmental and nongovernmental organizations have provided incentives to Tribes and private landowners associated with some ferret reintroductions in the past. Site-specific management plans will include details of any applicable compensation programs.

Comment: Three commenters expressed concerns that the large area of the SWEPA would expand the regulatory area and put more regulatory burden and potential penalties under the ESA on landowners. One commenter specifically expressed concern that a landowner without an SHA would experience increased regulatory burden if a ferret dispersed onto their property from an adjacent reintroduction site.

Response: The AVEPA reduced regulatory requirements by allowing most incidental take of ferrets. Applying the 10(j) rule to the SWEPA benefits the landowners within the entire SWEPA by providing them the same regulatory certainty and flexibilities of the existing programmatic SHA but without having individually to enroll their land in the SHA. If reintroduced ferrets disperse from a reintroduction site, the 10(j) designation will allow for incidental take of ferrets (*e.g.,* take that could happen from livestock grazing, farming, prairie dog control) in those additional areas in the SWEPA. We, in collaboration with our partners, would also coordinate with landowners affected by dispersal about available options, including voluntary participation in ferret recovery or potential removal of the ferrets from their land.

Comment: One commenter recommended that we retain the option for private landowners to enter into SHAs if they chose to assist in ferret recovery efforts.

Response: SHAs are compatible with 10(j) populations. Private landowners are not required to terminate an existing SHA, and new certificates of inclusion for the current programmatic SHA are not prohibited. SHAs remain an option for participating landowners; however, there are no significant differences between the terms and conditions of the SHA and 10(j) regulations related to how landowners operate their lands with respect to ferret recovery.

Comment: Two commenters stated that we should reintroduce ferrets to a site only after consent of all affected landowners, including landowners adjacent to and in the ferret dispersal range of a reintroduction site.

Response: Reintroduction sites are selected based on their potential to support ferret reintroductions and where there are willing landowners and managers. Prior to a ferret reintroduction, we will work with our partners to conduct outreach to landowners and affected stakeholders. The SWEPA includes areas into which ferrets could potentially disperse from a reintroduction site. We, in collaboration with our partners, will coordinate with landowners and managers affected by dispersing ferrets about available options, including voluntary participation in ferret recovery or potential removal of the ferrets from their land.

Comment: Two commenters stated that management for prairie dogs or ferret reintroductions on Federal land should occur only with the consent of grazing permittees using those lands. One commenter suggested that we set limits to livestock grazing on public lands.

Response: We will coordinate with other Federal agencies to support ferret reintroductions in ways that are compatible with their missions. Federal land management agencies have their own laws, policies, and regulations outlining how they manage lands under their authorities.

Comment: One commenter stated that the proposed rule clearly identifies and considers prairie dog control methods in Arizona, but fails to do so for New Mexico and Utah, and is concerned that establishing the 10(j) rule will ultimately lead to new and challenging conflicts between Federal and State authorities.

Response: The area of the proposed SWEPA that extends into New Mexico and Utah is entirely within the Navajo Nation. The Navajo Nation manages wildlife resources within their boundaries independent of the States. We did not propose to include any land in New Mexico or Utah outside of the Navajo Nation.

Comment: Several commenters expressed concern about negative effects of livestock grazing to prairie dog populations. One commenter specifically requested that the final EA include additional information about the effects of livestock grazing on prairie dog colonies and ferret reintroductions.

Response: We have considered the effects that livestock grazing, and other activities may have on establishing an experimental population of ferrets. Livestock grazing became a significant feature on the Arizona landscape in the

1880s and peaked in intensity around the late 1890s and early 1900s (Milchunas 2006, p. 7). Grazing in arid and semiarid areas can alter species composition and communities, disrupt ecosystem functions, and alter ecosystem structure (Fleischner 1994, p. 631). Despite these effects, prairie dogs remained prominent on rangelands in Arizona during the period of heaviest grazing and did not begin declining until the time of systematic prairie dog eradication programs (Oakes 2000, pp. 169–171). Available literature reveals a wide range of potential effects of livestock grazing on ecosystems and considers some negative and some beneficial (Milchunas 2006, entire; Jones 2000, entire). Effects vary with site-specific characteristics and management, including habitat type, grazing intensity, and history of grazing (Milchunas 2006, entire; Jones 2000, entire; Milchunas and Lauenroth 1993, entire). The long history of prairie dog persistence with livestock grazing in Arizona and persistence of ferrets at the AVEPA lead us to conclude that livestock grazing and ranching activities can be compatible with maintaining occupied prairie dog habitat capable of supporting ferrets. We added text in this final rule to support this conclusion (see ''How Will the Experimental Population (SWEPA) Further the Conservation of the Species?'' above). We do not evaluate effects of livestock grazing outside of the context of ferret reintroductions, because that consideration is beyond the scope of the evaluation necessary to establish an experimental population. In the draft EA, we do not evaluate the effects of livestock grazing on the affected environment, because the NEPA process requires us to consider the consequences of our proposed action. Livestock grazing currently occurs in the proposed SWEPA and is not part of our proposed action.

Comment: One commenter stated that we did not define ''well-managed grazing'' in the proposed rule or elsewhere and noted that some of the references we cited described ''an overgrazed condition.'' The commenters asked that we clarify what we consider ''well-managed grazing.''

Response: The terminology ''well-managed grazing'' and ''overgrazing'' that we used and cited in the proposed rule was qualitative and relative. We have edited the text in this final rule not to rely on terms describing relative grazing intensity. The effects of livestock grazing on prairie dog populations and their habitat are complicated and depend on the habitat quality and quantity and other conditions at each specific site. Based on the persistence of ferrets at Aubrey Valley/Double O Ranch, rangelands managed for livestock grazing can support prairie dog populations. Prior to introducing ferrets in the SWEPA, we will assess prairie dog populations to determine if the site will support a ferret population.

Comment: One commenter stated that we should not require the removal of ferrets that leave the experimental population area, because such dispersal would further species recovery.

Response: The SWEPA includes all potential ferret habitat within Arizona and the Navajo Nation, excluding the Hopi Villages in District 6. All currently identified potential reintroduction sites within the SWEPA are far from the borders of the SWEPA. Thus, we expect ferret dispersal outside of the SWEPA to be unlikely. In the unlikely event that a ferret occurs outside of the SWEPA, regardless of origin, we will work closely with affected landowners and managers to ensure that we develop applicable conservation measures cooperatively and to the benefit of landowners, managers, and ferrets. The rule allows for, but does not require, removal of ferrets outside of the SWEPA.

Comment: One commenter stated that reintroduction efforts should be primarily focused on how best to manage plague in prairie dog populations, not only regarding the effects on ferret reintroduction, but also to other species in the area and local communities. Another commenter stated that the rule should include proactive measures to bring potential reintroduction sites into the condition necessary to host ferret populations of sufficient size and resilience to contribute towards recovery. This commenter further stated that the rangewide decline in the ferret population since about 2007 ''appears to be that reintroduction sites are generally too small to support ferret populations through plague outbreaks.''

Response: Plague management is currently, and will continue to be, a management focus at existing and potential future ferret reintroduction sites, which will also benefit other species and local communities. The factors responsible for the eruption of epizootics and the maintenance of enzootic plague are currently not fully understood; research has identified multiple influential factors (USFWS 2019, p. 17). Because plague may persist in an enzootic state at several existing and potential reintroduction sites, and the social nature of prairie dogs facilitates plague transmission, larger colony size is not a safeguard against the spread of plague. A more effective strategy now is having multiple, widely spaced populations to buffer plague transmission.

Comment: One commenter seemed to interpret the purpose of ferret reintroduction as a form of prairie dog control.

Response: Our responsibility under the ESA is to conserve threatened and endangered species and the ecosystems upon which they depend. Our purpose in establishing the SWEPA is to promote the recovery of the ferret by establishing viable ferret populations. Viable ferret populations depend on persistent prairie dog populations. We are willing to work with landowners and managers amenable to maintaining prairie dog populations on their property to support a reintroduced ferret population. Outside of reintroduction areas, we, in collaboration with our partners, will work with landowners to avoid or minimize any adverse effects to ferrets that could occur from prairie dog control.

Comment: One commenter stated that the proposed rule understated the effects of current prairie dog poisoning. The commenter specifically pointed out that we list prairie dog poisoning as a concern in the Recovery Plan and recommended more protective regulations to improve opportunities for ferret reintroductions.

Response: The Recovery Plan describes the historical effect of poisons on the decline of prairie dogs and ferrets and assesses the effects of prairie dog poisoning to ferrets rangewide. The current use of poison to control prairie dogs is much reduced from historical use, and the current level of threat varies across the ferret's range. In the proposed rule, we considered the threat of prairie dog poisoning to ferrets in Arizona and concluded that prairie dog poisoning within the State is relatively minimal compared to historical use. For example, black-tailed prairie dogs were extirpated from southeastern Arizona by the late 1930's due to widespread indiscriminate poisoning for all small burrowing mammals (Hoffmeister 1986, p. 196). Comparatively, from 2013 through 2019, the Animal and Plant Health Inspection Service's (APHIS) Wildlife Services treated prairie dogs with zinc phosphide at three private properties totaling 56 ac (23 ha) of prairie dog colonies (C. Carrillo, pers. comm., APHIS, October 23, 2019). In addition, the poisons that pose the greatest risk to ferrets, anticoagulants, are banned in Arizona. Other poisons have the potential to affect ferrets by affecting prairie dog populations. In past

ferret reintroductions in Arizona, we worked with partners to identify landowners and managers willing to manage prairie dogs on their properties for ferrets. We will take a similar approach for future ferret reintroductions.

Comment: Three commenters expressed concerns about the effects of shooting on prairie dog populations at ferret reintroduction sites. Two commenters thought that we had not adequately considered the effects of prairie dog shooting. One commenter mentioned specific research about the effects of shooting on prairie dog populations and requested that the EA incorporate that research. All three commenters asked for increased restrictions on prairie dog shooting to support ferret reintroductions. One commenter additionally expressed concern about potential lead poisoning from shooting prairie dogs.

Response: We considered the potential for effects of prairie dog shooting on ferret reintroductions in the SWEPA in this 10(j) rule. We referenced relevant studies about effects of shooting on prairie dog populations (see ''*Actions and Activities that May Affect the Introduced Population*''). These effects vary across sites and with intensity of shooting. Based on current prairie dog monitoring data, we do not think that shooting is having substantial population-level effects on prairie dogs in established reintroduction sites in the SWEPA or in the potential reintroduction sites that are being monitored. Prairie dog monitoring will inform the suitability of a potential ferret reintroduction site and indicate whether additional management is needed to maintain prairie dog populations in support of ferrets. AZGFD regulates prairie dog hunting in most of Arizona, and as described in their Management Plan, they may close areas to prairie dog hunting at ferret reintroduction sites if monitoring shows a greater than 15 percent decline in prairie dog occupied acreage over a 3-year period. Tribes regulate prairie dog hunting on their respective lands. To the extent requested, we will assist any Tribe interested in reintroducing ferrets to address prairie dog management at potential reintroduction sites.

We did not evaluate the effects of prairie dog shooting on ferrets in the EA, because that type of a consideration is outside of the scope of an EA (40 CFR 1501.5). In the EA we are required to evaluate how the proposed action will affect the condition of the proposed SWEPA. In our evaluation of the social and economic conditions, we considered the effects of the proposed action to natural resource-based recreation, including prairie dog shooting.

While lead contamination is a potential threat resulting from prairie dog shooting, we have not documented any lead poisoning of ferrets. This species may be less susceptible to chronic lead poisoning than are longer lived predators (Pain et al. 2009, p. 107).

Comment: One commenter stated that our discussion of environmental consequences in the EA should include Tribal prairie dog shooting regulations in addition to the State regulations we included.

Response: As sovereign nations, each Tribe has the authority to regulate hunting on their lands. When reintroduction sites contain Tribal land, we do and will work with Tribes to ensure that measures to manage prairie dogs are compatible with ferret reintroductions.

Comment: One commenter asked about the extent to which ferret prey bases are being sustained by supplemental feeding, a strategy listed in AZGFD's Management Plan.

Response: AZGFD lists prairie dog supplemental feeding as a potential management strategy for specific circumstances; it is not a long-term strategy (AZGFD 2016, p. 15). We will reintroduce ferrets only at sites that have demonstrated persistent prairie dog populations at levels necessary to support ferrets.

Comment: One commenter asked that we address the potential threat of feral dogs to ferrets.

Response: Prior to a ferret reintroduction, we will assess potential site-specific threats. We expect feral dogs to pose a similar threat at ferret reintroduction sites as do coyotes. Coyote predation was a concern at early ferret reintroduction sites. Increased preconditioning of captive-born ferrets through outdoor pen rearing in recent years facilitates learning of important natural predator-avoidance behaviors and has led to increased survival rates following ferret releases into the wild (Biggins et al. 1998, pp. 647–648). In addition, like coyotes, feral dogs are a potential carrier of disease. We vaccinate all ferrets for canine distemper before reintroductions, continue disease management at all reintroduction sites, and expect that our current practices would minimize the potential threat that feral dogs, like coyotes, may pose at a reintroduction site.

Comment: One commenter suggested that we need to assess the effects of land management activities (*e.g.,* livestock grazing, off-highway vehicle use, and other recreational activities) at black-tailed prairie dog sites.

Response: Currently, the SWEPA does not contain enough occupied black-tailed prairie dog habitat to support a ferret reintroduction. Management may increase black-tailed prairie dogs in the future. When a black-tailed prairie dog population becomes large enough to support a ferret reintroduction, we will assess the threats to a ferret population and address those threats in a site-specific management plan.

Comment: One commenter expressed concern about effects of human-wildlife interactions on ferrets and pointed out the lack of data informing appropriate distances between ferret populations and human residential areas.

Response: We are not aware of effects of a reintroduction site's proximity to a human residential area on ferrets. Reintroduction sites are typically relatively remote and distant from large residential developments. The potential reintroduction sites identified in the proposed SWEPA are not within or adjacent to areas with high human densities.

Comment: One commenter stated that the 10(j) rule should commit to proactive management measures to bring potential reintroduction sites into the condition necessary to support ferret populations of sufficient size and resilience to contribute towards recovery.

Response: The establishment of the SWEPA to support future reintroductions promotes ferret recovery. Existing management plans or plans we develop in cooperation with our partners and stakeholders will guide management of ferret populations at individual reintroduction sites in the SWEPA. We remain committed to working with partners to encourage and implement proactive prairie dog management at current and potential reintroduction sites within the SWEPA.

Comment: One commenter, in response to a statement about the negative consequences of fragmented prairie dog colonies in the preamble of the proposed rule under ''Ecology/Habitat Use/Movement'', stated: ''An argument could be made that black-footed ferret populations that are associated with Gunnison's prairie dogs, which are extremely fragmented and less dense than black-tailed prairie dogs, could be more resilient to stochastic events than what is inferred.''

Response: The less dense spatial distribution of Gunnison's prairie dogs could increase resiliency by buffering the population against the spread of plague and other stochastic events. However, prairie dog colonies that exist

in smaller, isolated configurations are likely to have reduced resiliency because the smaller populations are more vulnerable to extirpation, and the isolation limits immigration and genetic exchange. We changed the wording in this final rule to clarify our description of the spatial distribution of prairie dog habitat (see ''Threats/Causes of Decline'' above).

Comment: One commenter suggested that we add ''availability of prey'' as a factor influencing ferret dispersal in our discussion of ''Actual or Anticipated Movements.''

Response: We edited the text accordingly in this final rule. We previously incorporated prey into our consideration of habitat in the proposed rule, however, we agree that explicitly identifying it in our discussion of actual or anticipated movements improves clarity.

Comment: One commenter asked what the estimated sustained population level is for the ferret.

Response: The Recovery Plan identifies the number of populations necessary rangewide to downlist the ferret from endangered to threatened and to remove the ferret from listing under the ESA: at least 10 and at least 30 populations, respectively. The Recovery Plan criteria indicate that each of those populations consist of at least 30 breeding adults, and it details our methodology for establishing these criteria. We expect the number of ferrets in each population to fluctuate over time, decreasing during plague outbreaks and increasing when plague is effectively controlled at a site. This assumption emphasizes the importance of having multiple, widely spaced populations to safeguard the species from the widespread chronic effects of plague as well as other periodic or random disturbances that may result in the loss of a population in one or more given areas.

Comment: Two commenters noted the discrepancy between the acreage of Gunnison's prairie dog habitat identified by the USFWS and AZGFD needed to support a ferret population: 7,415 and 5,540 ac (3,000 and 2,242 ha), respectively. One commenter expressed concern that this discrepancy has implications for reducing the success of reintroductions.

Response: The two different numbers identified by us and AZGFD represent two different estimates, not requirements, of the amount of Gunnison's prairie dog habitat needed to support a ferret population. The USFWS acknowledges in this final rule that the actual amount of prairie dog habitat needed will vary across the ferret's range. We allocate ferrets for reintroductions based on the best information available about the proposed site. While this information includes the total acreage of prairie dog habitat, we also consider other site-specific factors to assess a site's overall ability to support a ferret population. We have edited the text in this final rule to clarify that these numbers are estimates, and not requirements, to guide ferret reintroduction site selection (see ''Experimental Population'' above).

Comment: One commenter stated that the USFWS cannot make an essentiality determination for a proposed 10(j) population if there is no specific proposed reintroduction. The commenter further stated that, even if making a determination were appropriate, the proposed rule failed to justify a nonessential designation for the SWEPA, because we did not adequately address the species' viability in the wild or consider the status of other ferret populations in the wild.

Response: When we authorize the reintroduction of an endangered species outside of its current range as an experimental population, we are required to make a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild. We are not required by either the ESA or applicable regulations to postpone making this determination until we have made a decision regarding a ''specific proposed reintroduction.'' We have made the essentiality determination in this rule in accordance with the ESA and applicable regulations. We have addressed species' viability in the wild across its range to make an essentiality determination for the proposed SWEPA. We used the conservation biology principles of resiliency, redundancy, and representation to assess current and future species viability (Shaffer and Stein 2000, entire) in our SSA (USFWS 2019, pp. 43–83); we summarize that assessment in the ''Is the Experimental Population Essential or Nonessential?'' portion of the preamble to the proposed rule.

Given the current and anticipated future numbers of ferret populations and their distribution in the wild, there is no indication that populations established in the SWEPA could be described as those ''whose loss would be likely to appreciably reduce the likelihood of survival of the species in the wild.'' Loss of the SWEPA would not affect the remaining populations of ferrets in the wild. For these reasons, a nonessential determination for the SWEPA is valid. Additionally, captive-breeding efforts continue to support the establishment of more populations throughout the species' range.

Comment: One commenter stated that the draft EA fails to disclose that all the reintroduced ferret populations are listed as 10(j) nonessential and that the USFWS cannot rely on other ''nonessential'' populations to designate the SWEPA population as nonessential.

Response: Not all the ferret populations in the wild are nonessential experimental populations; we have used a variety of other regulatory mechanisms, including section 10(a)(1)(A) permits and SHAs, to reintroduce ferrets. Of the 18 currently active ferret reintroduction sites, 5 are nonessential experimental populations. The remainder occur under section 10(a)(1)(A) permits and SHAs. In 2019, active reintroduction sites were evaluated in the SSA; two were considered to be in high-resiliency condition and eight to be in moderate-resiliency condition (USFWS 2020, pp. 63–64). All the aforementioned regulatory mechanisms remain available to facilitate future ferret reintroductions across the species' range. Subpart H, part 17, of title 50 of the Code of Federal Regulations does not limit consideration of any population of a species when making an essentiality determination and requires an evaluation of the species as a whole, including all populations captive and wild.

Comment: One commenter expressed concern that we made our essentiality determination out of convenience to landowners and managers. The commenter specifically cited text in the proposed rule: We prefer applying the experimental population designation and regulations to the entire proposed SWEPA, because a single set of statutes and regulations and a single management framework would then apply to all lands, non-Federal and Federal, containing potential ferret habitat within the designated SWEPA boundary.

Response: The cited text is from the portion of the preamble pertaining to management restrictions, protective measures, and other special management and not from the portion pertaining to whether the proposed experimental population is essential or nonessential. We did not consider the cited text within the context of our essentiality determination. Rather, the cited text refers to the use of a single regulatory mechanism, the 10(j) rule, rather than multiple regulatory or permitting mechanisms, within the SWEPA.

Comment: One commenter expressed concern that ''a broad nonessential designation divests Federal land managers of important tools to protect the species, including the obligation to formally consult to prevent jeopardy under ESA section 7(a)(2), and the ability to designate critical habitat.'' The commenter expressed concern that there would never be an obligation to evaluate the potential for cumulative management actions to result in jeopardy.

Response: Under 50 CFR 17.83(a), for the purposes of section 7 of the ESA, we treat a nonessential experimental population as if it were a threatened species when located in a National Wildlife Refuge or unit of the National Park Service (NPS), and Federal agencies follow conservation and consultation requirements per sections 7(a)(1) and 7(a)(2) of the ESA, respectively. We treat nonessential experimental populations outside of a National Wildlife Refuge or NPS unit as species proposed for listing, and Federal agencies follow the provisions of sections 7(a)(1) and 7(a)(4) of the ESA. Section 7(a)(4) requires Federal agencies to confer with us on actions that are likely to jeopardize the continued existence of a species proposed to be listed. Because the nonessential experimental population is, by definition, not essential to the continued existence of the species in the wild, the effects of proposed actions on the population will generally not rise to the level of ''jeopardy.'' Nonetheless, some Federal agencies voluntarily confer with us on actions that may affect a species proposed for listing. Ferrets were listed under the ESA prior to the 1978 critical habitat amendments; therefore, designation of critical habitat for this species even outside of nonessential experimental population areas is at the discretion of the Secretary (50 CFR 424.12(e); USFWS 2013a, p 13).

Comment: One commenter stated that the EA should consider additional action alternatives, including an alternative that exempts federally managed lands from the SWEPA and an alternative that does not extend nonessential status to federally managed lands in the SWEPA. One commenter noted that, while the EA addresses the need of a 10(j) rule to garner support from private landowners on private lands, it does not specifically analyze the viability of ferret reintroductions on federally managed lands where there are regulatory mandates to further the conservation of imperiled species.

Response: In the EA, we evaluated the alternatives that we think are reasonable and feasible. Future reintroduced ferret populations will likely cross boundaries of land ownership. The potential sites identified in the rule contain private, Federal, State, and Tribal lands. Having a single regulatory mechanism for the entire experimental population will simplify management of the population. We did not consider an alternative that does not extend nonessential status to federally managed land, because land ownership is not a consideration of an essentiality determination.

Comment: One commenter stated that, rather than addressing management in the SWEPA, we deferred to the plan that AZGFD developed specifically for the AVEPA, not the SWEPA.

Response: AZGFD developed their Management Plan for the Black-footed Ferret in Arizona based on the best available science, including information in USFWS documents, such as the Recovery Plan and the Operations Manual, to guide ferret management statewide. We reviewed and commented on the AZGFD's Management Plan in its development, and it complements the USFWS Recovery Plan and the Operations Manual. For potential reintroduction sites on Tribal lands, we will offer our cooperation and assistance in the development of applicable management plans.

Comment: One commenter noted that the draft EA and proposed rule do not set timeframes or other commitments for reintroductions and provide only vague plans for ferret reintroduction in the SWEPA. The commenter further stated that the 10(j) rule must commit to management efforts to ensure successful reintroductions.

Response: Neither section 10(j) of the ESA nor the 10(j) regulations found at 50 CFR 17.81 require the USFWS to set timeframes or other commitments for reintroductions. In the proposed rule, we included the information necessary to identify the experimental population, as required by regulation. The potential reintroduction sites require additional management before site conditions could support a ferret population. We will work with our partners to develop site-specific management plans that include specific details regarding reintroductions, when site conditions can support ferret populations. Identifying these details in the future will allow us to take advantage of future opportunities as they arise. Our regulations require us to consider the likelihood that the experimental population will become established and survive in the foreseeable future but do not require commitment to specific management actions. In the proposed rule, we considered the potential for appropriate management for the ferret and its habitat in Arizona. Given the AZGFD's past commitment to ferret reintroduction and its development of a Management Plan for ferret reintroduction throughout its range in Arizona, and interest from the Hopi Tribe, Hualapai Tribe, and the Navajo Nation in reintroductions of and management for ferrets on their Tribal lands, we have a high level of confidence in implementation of management to support ferret populations in the SWEPA.

Comment: One commenter stated that the proposed rule lacks concrete, enforceable mechanisms to prevent unsustainable levels of take.

Response: Neither the ESA nor the 10(j) regulations found at 50 CFR 17.81 require concrete, enforceable mechanisms to prevent unsustainable levels of take. In accordance with 50 CFR 17.82, we have identified special rules for ferret nonessential experimental populations in 50 CFR 17.84(g). These allow most forms of incidental take of ferrets in the experimental population area, if the take is unintentional and not due to negligent conduct. Intentional and negligent take within the experimental population area is still prohibited and unlawful pursuant to section 9 of the ESA. The persistence of ferrets in the AVEPA/Double O Ranch has demonstrated that these same take provisions for the AVEPA/Double O Ranch have not meaningfully affected that population. We will work with our partners and stakeholders to apply existing management plans or develop site-specific management plans for future reintroduction sites. We addressed the sustainability of the ferret population in the ''Likelihood of Population Establishment and Survival'' portion of the preamble to the proposed rule.

Comment: One commenter was concerned that the USFWS is abdicating Federal authority of the reintroduction program to AZGFD. The commenter further stated that the rule should make clear that the USFWS holds primary responsibility for ferret recovery, has the authority to conduct and manage reintroductions even when parties such as permittees and State agencies oppose such efforts, and that the USFWS and other Federal agencies are under a constant duty pursuant to ESA section 7(a)(1) to utilize their authority in furtherance of ferret conservation.

Response: The USFWS has in no way abdicated its Federal authority regarding the ferret reintroduction program to AZGFD. Our final 10(j) rule revising the current nonessential experimental population of the black-footed ferrets is

a responsible use of our authority under the ESA. Section 6 of the Act specifically states that, in carrying out the programs authorized by the ESA, the Secretary shall cooperate to the maximum extent practicable with the States and that the Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. The USFWS is active in the management of all current and future potential ferret reintroduction sites. Additionally, we are responsible for allocating captive-bred ferrets and ensuring that reintroduction sites are suitable for supporting ferret populations. Our regulations in 50 CFR 17.81(d) require us to consult with AZGFD in developing and implementing this 10(j) rule, which we have done. This rule, to the maximum extent practicable, represents an agreement between the USFWS, affected Tribes, State and Federal agencies, and persons holding any interest in land that the establishment of an experimental population may affect. The mission of the USFWS directs us to work with others to conserve, protect, and enhance wildlife and their habitats. The USFWS Recovery Plan for the Black-footed Ferret additionally states that the development of partnerships with private landowners and Tribes is essential to recovery of the species.

The AZGFD has demonstrated its commitment to ferret conservation through their long-term active involvement in ferret conservation, including the development of the Management Plan for the Black-footed Ferret in Arizona. AZGFD has also demonstrated a commitment to our scientific understanding of ferret ecology and husbandry techniques and to developing relationships with private landowners essential for ferret conservation. The feasibility of future reintroductions will depend on such relationships with private landowners. Given these factors, we partner with AZGFD on ferret reintroductions on non-Tribal lands in Arizona.

In addition to private lands, all four future potential reintroduction sites identified in the proposed rule include Federal lands. We will coordinate with our Federal partners to use their authorities to further ferret recovery. We will also offer our cooperation and assistance to Tribes in the development of applicable management plans on Tribal lands.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule or revision to a rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the action on small entities (small businesses, small organizations, and small government jurisdictions). However, these acts require no regulatory flexibility analysis if the head of an agency certifies that the action will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action will not have a significant economic impact on a substantial number of small entities. We are certifying that this final rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The affected area includes release sites in Arizona, Tribal lands that coincide with Arizona, lands of the Navajo Nation that coincide with Arizona, New Mexico, and Utah, and adjacent areas into which ferrets may disperse, which over time could include significant portions of the SWEPA. Because of the regulatory flexibility for Federal agency actions provided by the nonessential experimental designation and the exemption for incidental take in the special rule, this rule is not expected to have significant effects on any activities on Federal, State, Tribal, or private lands in the revised area. Concerning section 7(a)(2), we treat the population as proposed for listing outside of NPS and USFWS-managed National Wildlife Refuge lands, and we do not require Federal action agencies other than NPS and USFWS National Wildlife Refuges to consult with us on their activities. Section 7(a)(4) requires other Federal agencies to confer (rather than consult) with the USFWS on actions that are likely to jeopardize the continued existence of a species proposed for listing. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, we will likely never require a conference for the ferret populations in the SWEPA. Furthermore, the results of a conference are advisory in nature and do not restrict Federal agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which will apply on any lands in the revised area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions in the SWEPA may occur to benefit the ferret, but we do not expect implementation of these regulations to halt or substantially modify proposed projects.

This revision includes the same authorizations provided in the AVEPA for incidental take of the ferret but over a larger landscape, the SWEPA. The regulations implementing the ESA define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. This rule does not authorize intentional take of ferrets for purposes other than authorized data collection or recovery purposes. Intentional take for research

or recovery purposes would require a section 10(a)(1)(A) recovery permit under the ESA.

The principal activities on private property in or near the revised nonessential experimental population area are livestock grazing and associated ranch management practices (*e.g.,* fencing, weed treatments, water developments, and maintenance). Ferret presence will not affect these land uses because there will be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the ferret, and Federal agencies will have to comply with sections 7(a)(1) and 7(a)(4) of the ESA only in these areas. Therefore, we do not expect this rulemaking to have any significant adverse impacts to activities on private lands in the SWEPA.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with this act:

(1) This rule will not ''significantly or uniquely'' affect small governments because it will not place additional requirements on any city, county, or other local municipalities. The USFWS determined that this rule will not impose a cost of $100 million or more in any given year on local or State governments or private entities. Therefore, this rule does not require a small government agency plan.

(2) This rule is not a ''significant regulatory action'' under this act; it will not produce a Federal mandate of $100 million or more in any year. The revised nonessential experimental population area for the ferret will not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule does not have significant takings implications. It allows for the take, as defined in the ESA, of reintroduced ferrets when such take is incidental to an otherwise legal activity, such as livestock grazing, agriculture, recreation (*e.g.,* off-highway vehicle use), and other activities that are in accordance with law and regulation. Therefore, the revision of the AVEPA to encompass a larger area, the SWEPA, will not conflict with existing or proposed human activities or hinder public land use.

This order does not require a takings implication assessment because this rule: (1) will not effectively compel a property owner to suffer a physical invasion of property, and (2) will not deny economically beneficial or productive use of the land. The rule substantially advances a legitimate government interest (conservation and recovery of a listed species) and does not present a barrier to reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with E.O. 13132, we have considered whether this rule has significant federalism effects and determined we do not need to conduct a federalism assessment. It does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies. Achieving the recovery goals for this species would contribute to the eventual delisting of the ferret and its return to State management. We do not expect any intrusion on State administration or policy, change in roles or responsibilities of Federal or State governments, or substantial direct effect on fiscal capacity. The rule operates to maintain the existing relationship between the State and the Federal Government, and we will implement it in coordination with the State of Arizona. Therefore, this rule does not have significant federalism effects or implications to warrant preparation of a federalism assessment under the provisions of E.O. 13132.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095 (expires 09/30/2023, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB). The USFWS may not collect or sponsor and may not require response to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.)

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact of this final rule. In cooperation with the AZGFD, the Hopi Tribe, Hualapai Tribe, and the Navajo Nation, we have prepared an environmental assessment and a FONSI for this action and have made them available for public inspection (see **ADDRESSES**).

Government-to-Government Relationships With Tribes

In accordance with the Executive Memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951, May 4, 1994), E.O. 13175 (65 FR 67249, November 9, 2000), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects of this rule revision on federally recognized Indian Tribes. We determined that the SWEPA overlaps or is adjacent to Tribal lands. Potential reintroduction sites identified in this revision, the CO Bar Ranch and Petrified Forest National Park, are near or adjacent to Tribal lands, as is the existing AVEPA where a reintroduced ferret population exists. We offered government-to-government consultation to nine Tribes: the Havasupai, Hopi, Hualapai, San Carlos Apache, San Juan-Southern Paiute, White Mountain Apache, and Yavapai-Prescott Tribes, Navajo Nation, and the Pueblo of Zuni. We met with the Hualapai, Hopi, and White Mountain Apache Tribes and the Navajo Nation about the proposed revision. Participation in ferret recovery is voluntary. If suitable habitat for ferret recovery is available on their lands, Tribes may choose either not to participate, or to participate through authorities under section 10(j), section 10(a)(1)(A), or the SHA (USFWS 2013b, entire). If we introduce ferrets onto non-Tribal lands adjacent to Tribal lands and any ferrets disperse onto Tribal lands, the aforementioned authorities will provide more regulatory flexibility under the ESA through allowances for incidental take.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. We

do not expect this rule to have a significant effect on energy supplies, distribution, and use. Because this action is not a significant energy action, this order does not require a statement of energy effects.

References Cited

A complete list of all references cited in this final rule is available online at *https://www.regulations.gov* at Docket Number FWS–R2–ES–2020–0123, or upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are staff members of the USFWS Arizona Ecological Services Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and record keeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11 in paragraph (h), amend the List of Endangered and Threatened Wildlife under ''MAMMALS'' by revising the entries for ''Ferret, black-footed'' and adding seven new entries for the ''Ferret, black-footed'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	*
Ferret, black-footed	Mustela nigripes	Wherever found, except where listed as an experimental population.	E	32 FR 4001, 3/11/1967; 35 FR 16047, 10/13/1970.
Ferret, black-footed	*Mustela nigripes*	U.S.A. (parts of WY (Shirley Basin/Medicine Bow Management Area); see § 17.84(g)(9)(i)).	XN	56 FR 41473, 8/21/1991; 50 CFR 17.84(g).[10j]
Ferret, black-footed	*Mustela nigripes*	U.S.A. (parts of SD (Conata Basin/Badlands Reintroduction Area); see § 17.84(g)(9)(ii)).	XN	59 FR 42682, 8/18/1994; 50 CFR 17.84(g).[10j]
Ferret, black-footed	*Mustela nigripes*	U.S.A. (parts of MT (Northcentral Montana Reintroduction Area); see § 17.84(g)(9)(iii)).	XN	59 FR 42696, 8/18/1994; 50 CFR 17.84(g).[10j]
Ferret, black-footed	*Mustela nigripes*	U.S.A. (parts of AZ, NM, UT (Southwest Experimental Population Area), see § 17.84(g)(9)(iv)).	XN	61 FR 11320, 3/20/1996; 88 FR [INSERT **Federal Register** page where the document begins], 10/5/2023; 50 CFR 17.84(g).[10j]
Ferret, black-footed	*Mustela nigripes*	U.S.A. (parts of CO, UT (Northwestern Colorado/Northeastern Utah Experimental Population Area), see § 17.84(g)(9)(v)).	XN	63 FR 52824, 10/1/1998; 50 CFR 17.84(g).[10j]
Ferret, black-footed	*Mustela nigripes*	U.S.A. (parts of SD (Cheyenne River Sioux Tribe Reintroduction Area), see § 17.84(g)(9)(vi)).	XN	65 FR 60879, 10/13/2000; 50 CFR 17.84(g).[10j]
Ferret, black-footed	*Mustela nigripes*	U.S.A. (parts of SD (Rosebud Sioux Reservation Experimental Population Area), see § 17.84(g)(9)(vii)).	XN	68 FR 26498, 5/16/2003; 50 CFR 17.84(g).[10j]
Ferret, black-footed	*Mustela nigripes*	U.S.A. (most of WY (Wyoming Experimental Population Area), see § 17.84(g)(9)(viii)).	XN	80 FR 66821, 10/30/2015; 50 CFR 17.84(g).[10j]
*	*	*	*	*

■ 3. Amend § 17.84 by revising paragraphs (g)(1), (g)(6)(iv), and (g)(9)(iv), and removing the fourth map (depicting the Aubrey Valley Experimental Population Area) and adding in its place Map 4 to paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) * * *

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through

(viii) of this section are nonessential experimental populations. We will manage each of these populations, and each reintroduction site in the Southwest and Wyoming nonessential experimental populations, in accordance with their respective management plans.

* * * * *

(6) * * *

(iv) Report such taking in the Southwest Experimental Population Area (SWEPA) to the Field Supervisor, Ecological Services, U.S. Fish and

Wildlife Service, Phoenix, Arizona (telephone: 602–242–0210).

* * * * *

(9) * * *

(iv) We consider the Southwest Experimental Population Area (SWEPA) to be the area shown on a map following paragraph (g)(12) of this section. The SWEPA includes the core recovery areas for this species in Arizona. The boundary of the northern section of the SWEPA is those parts of Apache, Coconino, Gila, Mohave, Navajo, and Yavapai Counties, Arizona, that include the northern area as delineated on the map, excluding Hopi District 6. The northern section also includes portions of Cibola, McKinley, Rio Arriba, Sandoval, and San Juan Counties, New Mexico, and San Juan County, Utah, that coincide with Navajo Nation lands. The boundary of the southern section of the SWEPA is those parts of Cochise, Pima, Pinal, Graham, and Santa Cruz Counties, Arizona, that include the southern area as delineated on the map. After the first breeding season following the first year of black-footed ferret release, we will consider any black-footed ferret found in the SWEPA as part of the nonessential experimental population. We would not consider a black-footed ferret occurring outside of the Arizona, New Mexico, and Utah portions of the SWEPA a member of the nonessential experimental population, and we may capture it for genetic testing. We may dispose of the captured animal in the following ways:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan.

* * * * *

Map 4 to paragraph (g)—Southwest Nonessential Experimental Population Area (SWEPA) for the black-footed ferret

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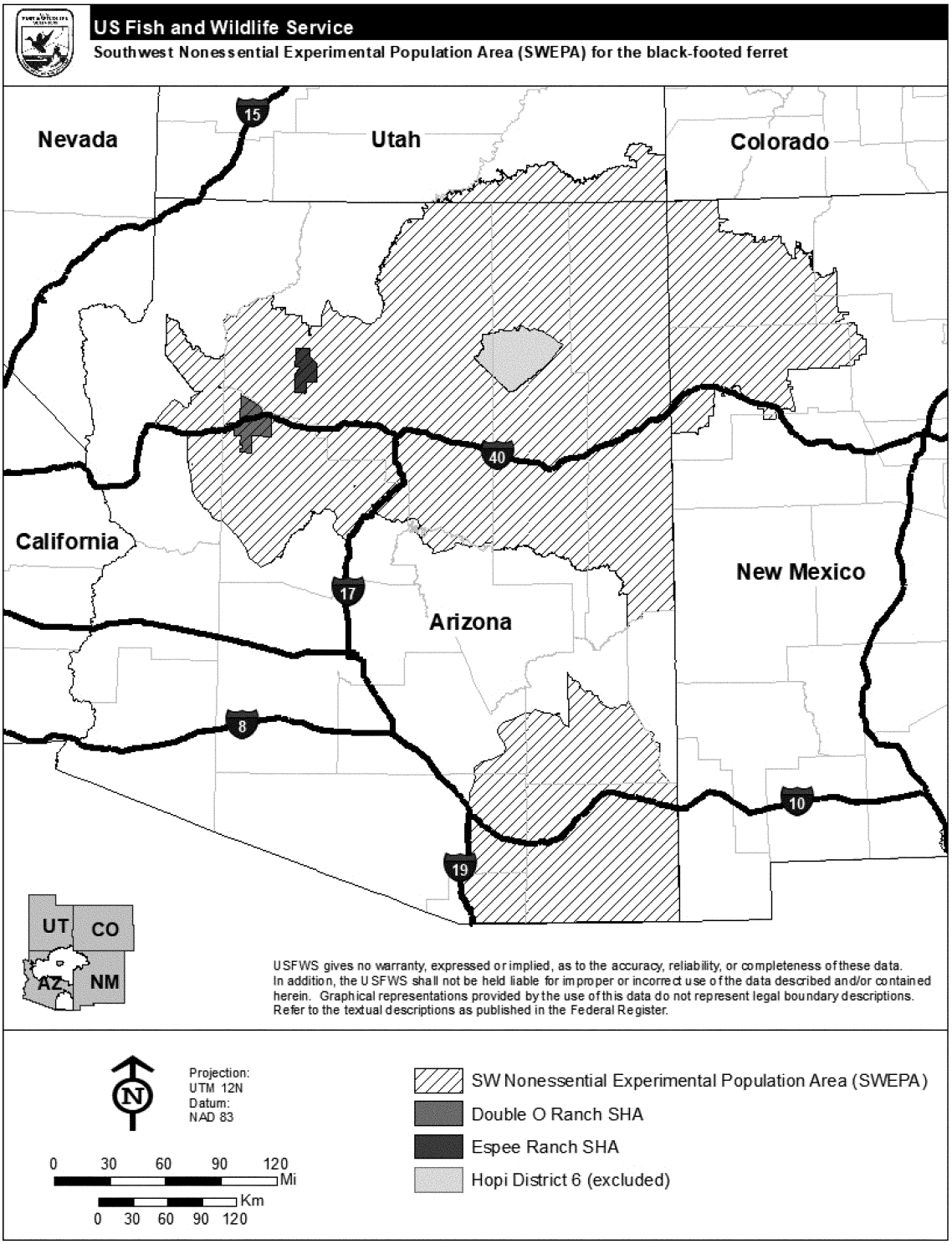

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–21978 Filed 10–4–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2022–0083; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BF84

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Lassics Lupine and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the Lassics lupine (*Lupinus constancei*), a plant species native to northern California. We also designate critical habitat for the species. In total, approximately 512 acres (207 hectares) in Humboldt and Trinity Counties, California, fall within the boundaries of the critical habitat designation. This rule extends the protections of the Act to this species and its designated critical habitat.

DATES: This rule is effective November 6, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov* and on the Service's website at *https://www.fws.gov/species/lassics-lupine-lupinus-constancei.* Comments and materials we received are available for public inspection at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2022–0083.

Availability of supporting materials: Supporting materials we used in preparing this rule, such as the species status assessment report, are available on the Service's website at *https://www.fws.gov/species/lassics-lupine-lupinus-constancei,* at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2022–0083, or both. For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at the same locations.

FOR FURTHER INFORMATION CONTACT: Tanya Sommer, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone 707–822–7201. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Lassics lupine meets the definition of an endangered species; therefore, we are listing it as such and finalizing a designation of its critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule lists the Lassics lupine as an endangered species, and designates critical habitat for the species, under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Lassics lupine is endangered primarily due to woody vegetation encroachment, pre-dispersal seed predation, fire, and reduced soil moisture due to drought associated with ongoing climate change.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Previous Federal Actions

Please refer to the October 6, 2022, proposed rule (87 FR 60612) for a detailed description of previous Federal actions concerning the Lassics lupine.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Lassics lupine. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing and recovery actions under the Act (16 U.S.C. 1531 *et seq.*), we solicited independent scientific review of the information contained in the SSA report. As discussed in the proposed rule (87 FR 60612; October 6, 2022), we sent the SSA report to four independent peer reviewers and received four responses. The peer reviews can be found at *https://www.regulations.gov* and *https://www.fws.gov/species/lassics-lupine-lupinus-constancei.* In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which serves as the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found under Summary of Comments and Recommendations, below.

Summary of Changes From the Proposed Rule

Since the October 6, 2022, proposed rule was published, additional monitoring data were collected and analyzed. We incorporated these

population surveys into the SSA report and added the new information to this final rule. To assess the current condition of the two populations of Lassics lupine, we now use the most recent 7 years of data (instead of 5 years of data). Numbers in two of four analysis units increased in 2021 relative to 2020, while two of four analysis units declined in 2022 relative to 2021. Overall, the average number of plants rangewide declined from 1,000 to 800 between 2020 and 2022 (Carothers 2022, entire). Under Available Conservation Measures, below, we both (1) clarify which types of vegetation management would not result in a violation of section 9, and (2) remove mention of herbicide use, given that we conclude that herbicide use could impact the species.

We have otherwise made minor editorial corrections, but no substantive changes, to the October 6, 2022, proposed rule (87 FR 60612) in this final rule.

Summary of Comments and Recommendations

In the proposed rule published on October 6, 2022 (87 FR 60612), we requested that all interested parties submit written comments on the proposal by December 5, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Times-Standard. We did not receive any requests for a public hearing. All substantive information we received during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

As discussed in Peer Review, above, we received comments from four peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions with two exceptions (addressed below in our response to comments). They also offered suggestions and clarifications to improve our descriptions of the species' ecology and threats, and our assessments of current and future conditions. We incorporated all feedback we received from the peer reviewers to improve the accuracy and readability of the final SSA report. Peer reviewer comments are addressed in the following summary and were incorporated into the SSA report as appropriate.

(1) Comment: Two reviewers thought that our categories describing canopy cover were not accurate and did not capture the nuance of individual needs between sites.

Our response: We revised the description for each condition category to better reflect this nuance. Some sites need higher canopy cover to protect from higher amounts of solar insolation, while other sites need less canopy cover based on localized orographic shade. Instead of categorizing canopy cover as qualitative, we instead use a more quantitative description suggested by one peer reviewer.

(2) Comment: One reviewer thought our future scenario assessments might be overly optimistic given recent mild weather conditions and changes to canopy cover that might not have been fully realized in current population trends. Another reviewer indicated that given what we know about the correlation of climate and demographic rates, there would be lower population growth rates, meaning we were overly optimistic in our characterization of future scenarios.

Our response: We considered these comments and revisited our future scenario analysis. We changed the future condition categories to better reflect the plausible future conditions. This resulted in all four population conditions for future scenario 1 being lower than in the previous version (for example, the condition of the Red Lassic decreased from low to very low).

(3) Comment: One reviewer asked why we had not included a future scenario that includes representative concentration pathway (RCP) 8.5 and caging continued at current levels. This reviewer also requested more information in general on how we selected our scenarios.

Our response: The future scenarios are meant to capture the range of plausible future conditions, bounded by the most optimistic plausible scenario and the most pessimistic plausible scenario, with the idea being that all plausible future conditions would be captured in that range. The scenarios we selected for the SSA report meet those criteria. The combination of RCP 8.5 and current caging levels is captured in the range of future scenarios chosen.

Comments From Tribes, States, and Federal Agencies

We did not receive any comments during the October 6, 2022, proposed rule's comment period from Tribes or from State or Federal agencies.

Public Comments

We received six public comments during the October 6, 2022, proposed rule's comment period; five of these are directly related to the proposed rule. All five of the comments related to the proposed rule support our proposed listing and critical habitat designation for the Lassics lupine. We reviewed all comments we received for substantive issues and new information regarding the proposed rule. None of the comments we received include new information concerning the listing of, or the critical habitat designation for, the Lassics lupine. Because none of the public comments we received provide any new or substantial information or poses questions to be addressed, they do not warrant an explicit response in this rule.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Lassics lupine (*Lupinus constancei*) is presented in the SSA report (version 1.2; Service 2023, pp. 11–18).

The following species description is largely paraphrased from the original species description and the Jepson Manual, 2nd edition (Nelson and Nelson 1983, entire; Baldwin et al. 2012, pp. 772–775). Lassics lupine is a taprooted, herbaceous perennial that grows to a height of less than 15 centimeters (cm) (6 inches (in)) from a short, slightly woody stem. The leaves and stem are covered in relatively long, shaggy hairs, and the plant is cespitose (growing close to the ground). Like other plants in the genus *Lupinus,* the leaves are palmately compound and generally clustered around the base.

Like other flowers of the family Fabaceae (legumes), the flowers of Lassics lupine are pea-like and composed of five unique petals. The flowers are pink and white with some variation between the individual petals. The flowers are arranged in a dense inflorescence called a raceme, meaning individuals flowers emerge on short stalks (pedicel) along a central axis. Mature plants can produce up to 20 or more inflorescences (clusters of flowers), but they typically produce fewer. Lassics lupine flowers develop into a fruit called a legume that splits in two halves (pods) that produce between one and five seeds, with an average of two seeds per fruit (Kurkjian 2012b, p. 5).

Lassics lupine reproduction occurs entirely through seed, and like many

members of the legume family, they exhibit seed dormancy, meaning there is a physical barrier that prevents moisture from entering seeds (*i.e.,* an impermeable seed coat) (Guerrant 2007, p. 13). This seed coat prevents germination and allows the plant to form a persistent seed bank. This seed coat appears relatively robust upon inspection, and germination trials suggest that scarification (intentionally damaging the seed coat) is necessary for germination to occur in laboratory conditions (Guerrant 2007, p. 14). This suggests that abrasion or other damage to the seed coat is necessary for germination in natural conditions.

It is unknown exactly when the majority of Lassics lupine seeds typically germinate, but it is thought to occur shortly after snow has melted (which is typically between March and May) and temperatures begin to rise. Plants can flower and produce seed within their second year but more often, they take several years to reproduce (California Department of Fish and Wildlife (CDFW) 2018, p. 13; Kurkjian 2012b, entire). Lassics lupine typically blooms from June to July but can start producing flowers as early as May (Baldwin et al. 2012, p. 772).

Lassics lupine may be capable of self-pollination, based on evidence of partial fruit development in flowers that were experimentally hand-pollinated and excluded from pollinator visits (Crawford and Ross 2003, p. 3). However, Lassics lupine is also visited at high rates by three bee species: yellow-faced bumblebee (*Bombus vosnesenskii*), black-tailed bumblebee (*Bombus melanopygus*), and a mason bee species (*Osmia* spp.) (Crawford and Ross 2003, p. 2). All three of the bee species appear to be capable pollinators given that they are large enough to trigger the mechanism that releases pollen from the individual flowers, but no pollination experiments have taken place to quantify the rate or efficacy of these pollinator species (Crawford and Ross 2003, p. 3).

Lassics lupine is documented to occur between 1,700–1,800 meters (m) (5,600–5,800 feet (ft)) in elevation around Mount Lassic and Red Lassic on the border of Humboldt and Trinity Counties, California. The species is currently described in two elemental occurrences, or populations, as delineated by the California Natural Diversity Database (CNDDB). CNDDB considers populations to be spatially explicit if they are separated by a 0.4-kilometer (km) (0.25-mile (mi)) interval.

Lassics lupine occurs on or in the vicinity of serpentine soils in the Lassics Mountains, mainly on barren slopes with very shallow soil and low organic matter, or less commonly, near edges of Jeffrey pine (*Pinus jeffreyi*) forests. Most plants occur in areas with little to no tree overstory and can occur on flat or steep slopes with high proportions of gravel or cobble on the surface.

Two populations comprise the total of Lassics lupine occurrences: the Red Lassic and Mount Lassic populations (see figure 1, below). Over the previous 7 years of monitoring, the Red Lassic population has ranged in size from 0 to 320 individuals, and the Mount Lassic population has ranged in size from 59 to 504 individuals. Rangewide totals of adult plants have ranged from fewer than 200 to approximately 1,000 individuals over the previous 7 years of monitoring which includes plants in both populations as well as plants outside of those two populations.

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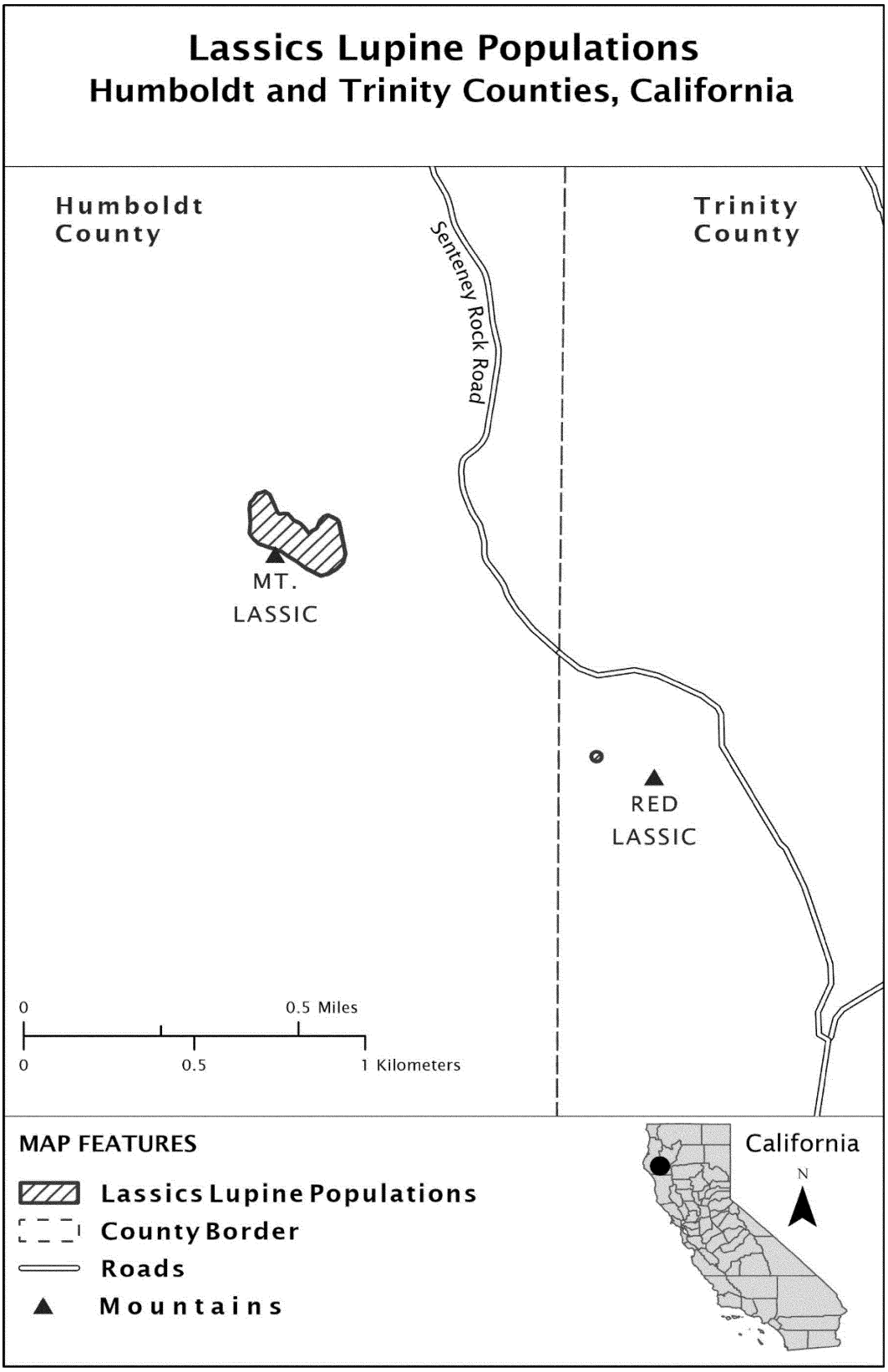

Figure 1. Lassics lupine populations on Mount Lassic and Red Lassic.

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Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess Lassics lupine viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogen). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306) Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over

time which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R8–ES–2022–0083 on *https://www.regulations.gov* and at *https://www.fws.gov/species/lassics-lupine-lupinus-constancei.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Individual Needs

Individual Lassics lupines occur on gravelly, shallow serpentine or clastic soils that are relatively free of competing vegetation. It is unknown if soil microbes are necessary for germination of seeds, but increased germination success and plant vigor has been described in trials with native soil (presumably populated with soil microbes) from the Lassics (Guerrant 2007, pp. 14–15). Cross-pollination between Lassics lupine individuals is dependent on pollination by bees (Crawford and Ross 2003, entire).

Plants need a sufficient amount of sunlight and moisture. A sufficient amount of insolation (the amount of solar radiation reaching a given area) is necessary for Lassics lupine to reproduce, with increased vigor being documented in areas with higher insolation. However, too much insolation leads to decreased soil moisture. Plants typically occur either on north aspects, which provide orographic shading (when an obstacle, in this case a mountain peak, blocks solar radiation for at least part of day based on aspect), or on south aspects with some shading from nearby trees. Available soil moisture throughout the growing season is important for Lassics lupine to reproduce and to avoid desiccation.

In summary, individual Lassics lupine plants require native, shallow serpentine or clastic soils; a suitable range of solar insolation; sufficient moisture throughout the growing season; and access to pollinators (Service 2023, table 3.2).

Population Needs

To be adequately resilient, populations of Lassics lupine need sufficient numbers of reproductive individuals so that they are able to withstand stochastic events (expected levels of variation in environmental or demographic characteristics). For example, populations must be large enough to withstand annual variation in moisture levels that may cause mortality to some individuals. A minimum viable population (MVP) has not yet been calculated for Lassics lupine. However, we do know that the current population sizes are too small to withstand current rates of seed predation without significant management efforts, based on negative population growth rates and high probabilities of quasi-extinction (a population collapse that is predicted to occur when the population size reaches some given lower density, defined as 10 or fewer adult plants for the Lassics lupine) across all sites without significant management efforts (Kurkjian et al. 2017, entire).

In the SSA report, we estimated MVP for Lassics lupine by comparison to surrogate species (species with similar life histories). Based on our analysis (Service 2023, table 3.1), we suggest an estimated MVP in the intermediate range (250 to 1,500 individuals) would be a sufficient number to withstand stochastic events. This provisional MVP range will be revised in the future if accumulated data allow a more precise calculation.

Sufficient annual seed production and seedling establishment is necessary to offset mortality of mature Lassics lupine plants within a population. Because large individuals produce more seed (Kurkjian 2012a, entire), their loss could have detrimental effects on the overall population. Sensitivity analyses across all sites demonstrated that survival and growth of reproductive plants had the most influence on population growth rate, followed by vegetative plants and seeds, and then seedlings (Kurkjian et al. 2017, p 867). Cross-pollination between Lassics lupine individuals presumably contributes to genetic exchange within and between populations and subpopulations, and is dependent on sufficient abundance and diversity of pollinators (Crawford and Ross 2003, entire).

Gravelly or rocky habitat that is relatively free of forest encroachment and other vegetative competition is important for population persistence. Historically, these serpentine barrens were shaped by geologic forces and presumably kept free of forest and shrub encroachment by fire, perhaps both natural and anthropogenic. With a reduced fire frequency compared to historical levels, this habitat is susceptible to encroachment by native successional species such as Jeffrey pine, incense cedar (*Calocedrus decurrens*), and pinemat manzanita (*Arctostaphylos nevadensis*) (Carothers 2008, entire). Lassics lupine requires relatively open canopy and limited competition from other plants for the limited moisture available during the growing season (Imper 2012, p. 142).

Species Needs

In order for the Lassics lupine to sustain itself in the wild over time, it should have a sufficient number (redundancy) of secure, sustainable populations (resiliency) that are well-distributed throughout its geographic range and throughout the variety of ecological settings in which the species is known to exist (representation). Suitable habitat must be available, and the number and distribution of adequately resilient populations must be sufficient for the species to withstand catastrophic events.

The historical extent and distribution of Lassics lupine is not precisely known. The species was possibly more abundant and more widespread in the past, although historical population boundaries are unknown. A comparison of soils from areas occupied by Lassics lupine to nearby areas that appear similar, but are not occupied, indicated that there are few sites that meet the species' specific soil requirements (Imper 2012, p. 27). This suggests that the distribution was not significantly more widespread than it is now, although vegetation encroachment has affected areas adjacent to and edges of the extant populations and there has been retraction of population boundaries of up to 20–30 percent in recent years (Service 2023, figure 4.2; Imper and Elkins 2016, pp. 16–18). Given the specialized adaptations to the harsh environment it occupies currently, it is unlikely that Lassics lupine ever occurred in a diverse range of ecological requirements, and the current distribution is likely a reflection of complex geological processes that shaped the Lassics Range. Additionally, it is unclear whether the species maintains sufficient genetic variability to persist under changing environmental conditions.

Threats

In this final rule, we discuss those threats in detail that could meaningfully impact the status of the species, including six threats analyzed in the SSA report for the Lassics lupine (Service 2023, entire): vegetation encroachment (Factor A), seed predation and herbivory (Factor C), fire (Factor A), climate change effects (Factor E), and invasive species (Factor A). We also evaluate existing regulatory

mechanisms (Factor D) and ongoing conservation measures.

In the SSA, we also considered the following threats: overutilization due to commercial, recreational, educational, and scientific use (Factor B); disease (Factor C); and recreation (Factor E). We concluded that, as indicated by the best available scientific and commercial information, these threats are currently having little to no impact on the Lassics lupine, and thus their overall effect now and into the future is expected to be minimal. Therefore, we will not present summary analyses of those threats in this document, but we considered them in our overall assessment of impacts to the species. For full descriptions of all threats and how they impact the species, please see the SSA report (Service 2023, pp. 22–33).

We note that, by using the SSA framework (Service 2016, entire) to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Vegetation Encroachment

Lassics lupine's density and vigor are highest in areas with sufficient insolation and when relatively free of competition for light and water (Imper 2012, p. 140). Since the 1930s, forest and chaparral vegetation communities in the range of the Lassics lupine have expanded in both distribution and density (Carothers 2017, entire; Service 2023, figures 4.1 and 4.2). On the north slope of Mount Lassic, Jeffrey pine and incense cedar have expanded; on the south slope of Mount Lassic, chaparral has matured and become more dense (Carothers 2017, p. 2). Increased distribution of the forest and chaparral communities in the areas surrounding Lassics lupine populations over the last 90 years may be due to fire suppression (Carothers 2017, entire). Based on suitable soil types and aspect, the north slope of Mount Lassic may have supported Lassics lupine in the past, connecting the three subpopulations that currently make up the Mount Lassic population.

The effects of vegetation encroachment on Lassics lupine populations are twofold. There is a subsequent increase in canopy cover and leaf litter, which reduces habitat suitability. There is also an increase in seed predators, which decreases fecundity. With an increase in the distribution and density of trees on the north slope of Mount Lassic, there is a subsequent increase in canopy cover and reduced insolation. Available soil moisture has been shown to decrease more rapidly in forested areas in the spring and summer (Imper 2012, p. 140). Additionally, these areas are now covered in a dense layer of leaf litter and forest duff, which may suppress the germination of Lassics lupine seeds and increase the risk of catastrophic fire by providing fuel in otherwise barren areas that likely burned at low severity in the past (Carothers 2017, p. 4; Imper 2012, pp. 139–140).

Overall, vegetation encroachment influences fecundity, habitat quality, and survival throughout the range of the species and especially on the edges of the Mount Lassic population. Ultimately, vegetation encroachment has a strong influence on the amount of available habitat and limits current population sizes of the Lassics lupine. We expect that vegetation encroachment on occupied Lassics lupine habitat will continue to increase into the future.

Seed Predation and Herbivory

Seed predation by small mammals is one of the most influential threats to Lassics lupine (Crawford and Ross 2003, p. 4; Kurkjian et al. 2017, p. 862). This threat has been observed and documented at significant levels since monitoring began in 2001. Pre-dispersal seed predation (removal of seeds while they are still attached to the plant, resulting in seed mortality) was first observed at high rates, with 72 percent of observed inflorescences suffering from almost complete predation (n=67; Crawford and Ross 2003, p. 3). Seed predation has been shown to have severe impacts on small or rare plant populations, including Lassics lupine (Dangremond et al. 2010, p. 2261; Kurkjian et al. 2017, entire). Since 2005, monitoring of small mammal populations has been conducted annually. Several species have been identified as Lassics lupine seed consumers, primarily deer mice (*Peromyscus* spp.), chipmunks (*Tamias* spp.), and the California ground squirrel (*Otospermophilus beecheyi*).

For other species, increased risk of seed predation has been demonstrated to be higher in areas close to vegetation (Myster and Pickett 1993, p. 384; Notman et al. 1996, p. 224; McCormick and Meiners 2000, p. 11; Dangremond et al. 2010, entire). Over the past 20 years, research on Lassics lupine habitat has demonstrated that small mammal seed predators are most abundant in the chaparral habitat, followed by bare serpentine habitat, with the lowest abundance documented in the forest habitat (CDFW 2018, appendix B). There is a high probability of movement between the chaparral and serpentine communities and an intermediate probability of movement between the forest and serpentine communities (Cate 2016, pp. 36–40). The proximity of vegetated communities to the serpentine barrens likely provides shelter and food for seed predators, and there is an increased likelihood that seeds adjacent to chaparral habitats will be subject to increased pre-dispersal seed predation (Kurkjian 2011, pp. 2–3). Studies of seed production in 2010 and 2011 estimated that only 2 to 5 percent of Lassics lupine seed escaped predation (Kurkjian 2012a, pp. 14–15).

A population viability analysis (PVA) has shown that pre-dispersal seed predation has the potential to drive Lassics lupine to extinction (Kurkjian 2012b, entire; Kurkjian et al. 2017, entire). Without factoring in the potential effects of other threats or catastrophic events, the PVA estimates that the probability of quasi-extinction (defined as 10 or fewer adult plants) in the next 50 years is between 68 and 100 percent and is very likely to occur within the first 20 years. If all reproductive plants are caged, preventing seed predation, the probability of quasi-extinction is reduced to between 0.0 and 1.8 percent over the next 50 years (Kurkjian et al. 2017, pp. 867–868). This research demonstrates the significant influence that pre-dispersal seed predation has on the species and emphasizes the importance of caging reproductive plants until seed predation can be addressed by other means. Post-fire small mammal monitoring and seed surrogate trials suggest that pre-dispersal seed predation risk decreased in the first 2 years following the 2015 Lassics Fire, as small mammal density declined in some areas. This effect appeared to be transient.

After observations of unusually high pre-dispersal seed predation rates, Six Rivers National Forest and Service staff made the decision to start caging

reproductive Lassics lupine plants in 2003. Cages are generally deployed in May or June around accessible adult plants. Cages are constructed of various types of wire mesh and are designed to allow pollinators to access flowers, while simultaneously preventing seed predators and herbivores from accessing adult plants. Cages are removed after seeds are released and before winter snow prevents access to the site. Caging has occurred at various levels, and after severe population declines in 2015, it was expanded to include a majority of reproductive individuals. This expanded caging effort has been credited with the positive overall population trends since 2016 (Service 2023, figure 5.3).

Herbivory of flowers and vegetation has also been observed during annual demographic monitoring and on cameras placed near plants to document the suite of predators; in some instances, herbivores consume entire plants or excavate the plant to a sufficient depth to cause death (CDFW 2018, p. 24). While the observation of these events has been rare, so are the opportunities to observe such events. In some years, there has been documentation of 1 to 3 plants per year being removed entirely through herbivory. Given the frequency of observed herbivory, the overall impact to populations is unknown.

In summary, seed predation is affecting the reproduction of the Lassics lupine across its range, which in turn influences population size and viability. This is having species-level effects and is mitigated by annual efforts to cage individual Lassics lupine plants to prevent small mammal seed predators from accessing mature fruits (see *Conservation Efforts and Regulatory Mechanisms,* below, for more information). Seed predation, likely influenced by vegetation encroachment, is a significant influence on Lassics lupine viability and may increase into the future as vegetation encroachment increases. However, the effects of seed predation are being reduced due to ongoing conservation efforts.

Fire

Historical fire return intervals in the Lassics Range are unknown but have been estimated to be approximately every 12.7 years across the Mad River Ranger District of Six Rivers National Forest (Carothers 2017, p. 4) and every 20 years across the range of Jeffrey pine, although they may be longer for relatively open stands with reduced fuels, such as serpentine barrens similar to where Lassics lupine populations occur (Munnecke 2005, p. 2). There is little recorded information regarding fire history prior to the 1900s, although prior to 1865, local Tribes in the general area used fire with some regularity to manage the understory (Carothers 2017, p. 4).

A total of 18 fires have been recorded in the Lassics Botanical and Geologic Area between 1940 and 2014, with 71 percent under 5 acres (ac) (2 hectares (ha)) in size (Carothers 2017, p. 5). Most of these were caused by lightning and were largely fought by small crews using hand tools. A thorough analysis of historical and current fire regimes on National Forest lands in California demonstrated a significant decline in fire frequency in northwestern California since 1908 (Safford and Van de Water 2014, entire). Fire return intervals are estimated to have declined by 70 to 80 percent within the Lassics Botanical and Geologic Area (Carothers 2017, p. 7). These results indicate that fire intervals are shorter, and fire is less frequent in the Lassics Range than it was prior to fire suppression.

The Lassics Fire, which was caused by lightning and centered on Mount Lassic, burned roughly 18,500 ac (7,490 ha) in August 2015. The fire burned at high severity through the chaparral on the south side of Mount Lassic and through the entire Red Lassic population. The forested area on the north side of Mount Lassic burned at mixed severity, and areas dominated by serpentine barrens burned at low severity. The Lassics Fire caused direct mortality of many individuals, killing all individuals at Red Lassic, and a portion of individuals at Mount Lassic. Additionally, at Red Lassic, the fire killed the Jeffrey pine, which appear critical to survival of Lassics lupine individuals there for the shade they provide (Imper 2012, pp. 138–139). As of 2019, these trees were still standing and providing some shade but are at risk of falling over, which would reduce shade and potentially cause direct mortality of plants beneath them. The fire did not burn at a high enough severity to reduce the density or distribution of Jeffrey pine in the forested area north of Mount Lassic. The chaparral area on the south side of Mount Lassic burned at high severity and reduced the canopy cover of these species temporarily; however, those areas have since resprouted and the vegetation is returning rapidly, along with an invasive grass that is known to follow fire.

In 2016, the year following the fire, there was a substantial flush of Lassics lupine seedlings observed across all sites. Given the mortality of all adults in the Lassic Fire at Red Lassic, we know that all the seedlings at Red Lassic were the result of germination from the soil seed bank. Seed bank germination also contributed significantly to the population at Mount Lassic, where the fire effects were patchier. It is unknown what effect this level of germination had on the number of seeds remaining in the soil seed bank.

In summary, future fires could have both positive and negative effects on Lassics lupine individuals and populations, depending on severity. Fires that eliminate or reduce encroaching vegetation could have positive effects due to a reduced abundance of small mammal seed predators and increased habitat suitability where insolation and available soil moisture are limited. Mixed and high severity fires have the potential to kill vegetative and adult plants and potentially reduce the seed bank. Fire is a significant influence on the viability of the Lassics lupine.

Climate Change

Observed changes in the climate system indicate that the surface of the earth is getting warmer, and the amounts of snow and ice have diminished (International Panel on Climate Change (IPCC) 2014, p. 2). These changes have been occurring for decades, and the last three decades have been successively warmer than any prior decade since 1850 (IPCC 2014, p. 2). The Fifth Assessment Report of the IPCC reported with very high confidence that some ecosystems are significantly vulnerable to climate-related extremes such as droughts and wildfires (IPCC 2014, p. 8). Average annual temperatures in California have risen by approximately 2 degrees Fahrenheit (°F) in the last 100 years (Frankson et al. 2017, p. 4). Projections indicate that warming trends in the western United States will continue and likely increase while projections of future precipitation are less conclusive (Dettinger et al. 2015, p. 2088). Even if precipitation increases in the future, as many models indicate, temperature rises will decrease snowpack duration and increase the rate of soil moisture loss during dry spells, further reducing the water available in the soil (Kim et al. 2002, pp. 5–7; Frankson et al. 2017, p. 4). This is expected to increase not only the frequency and duration of droughts but also the frequency and severity of wildfires (Frankson et al. 2017, p. 4).

Snowmelt date, summer precipitation, and late summer temperatures all appear to be affecting the distribution, mortality, reproduction, and recruitment of Lassics lupine (Imper 2012, entire). Survival of Lassics lupine

tends to be lower in years when snowpack melts early, particularly if it is not followed by summer rain (Imper 2012, p. 143). The average snow fall is projected to decrease with rising temperatures, reducing water storage in the snowpack (Frankson et al. 2017, p. 4). Desiccation is a common form of death for this plant that lives in shallow soils on exposed mountaintops. Low rainfall and high temperatures in the summer have detrimental effects at a population level.

Climate data collected since 2005 at the Zenia Forest Service Guard Station, roughly 15 km (9.5 mi) southeast of the Lassics and 460–520 m (1,500–1,700 ft) lower in elevation, show that annual average temperatures have been increasing (California Data Exchange Center 2021, unpaginated). This increase in annual temperature has the potential to negatively influence Lassics lupine by reducing the amount and duration of snowpack in the winter as well as increasing mortality due to desiccation during the summer.

When extreme weather events occur, the entire species is affected due to its limited geographic range. Climate change increases the likelihood of such extreme events now and into the future. Additionally, because Lassics lupine already occurs on the highest peaks in the area, there is no habitat at higher elevations available for Lassics lupine to move into as climatic conditions at lower elevations become unsuitable, nor are there additional populations spread throughout the landscape to help the species recover from these events.

Climate change is influencing individual survival and overall population sizes rangewide. Climate change, through increasing temperatures and reduced snowpack, is a significant influence on the viability of Lassics lupine.

Invasive Species

Cheatgrass (*Bromus tectorum*) is a highly invasive species that occurs throughout most of North America and is most prominent and invasive in the Rockies, Cascades, and Sierra Nevada mountain ranges (Zouhar 2003, unpaginated). It is well-adapted to frequent fires, often emerging as a strong competitor in a post-fire environment and can increase the frequency of fires by creating a highly flammable environment (Zouhar 2003, unpaginated). Another way cheatgrass alters the environment is by adding nitrogen and creating a positive feedback loop that promotes dominance of cheatgrass (Stark and Norton 2015, p. 799). Additionally, input of nitrogen into serpentine ecosystems can alter the ability of the native plant community to resist invasion (Going et al. 2009, p. 846).

Serpentine soils are more resistant to invasion by nonnative plant species than the communities found in adjacent matrix soils (Going et al. 2009, p. 843); however, nonnative plant species can become more prevalent on small patches of serpentine, particularly where patches of serpentine are small or fragmented (Harrison et al. 2001, p. 45). Thus, the presence of cheatgrass could make the Lassics lupine population at Mount Lassic more vulnerable to secondary invasions.

Previously, nonnative, invasive plants have not been reported as a threat to Lassics lupine in monitoring reports provided by the U.S. Forest Service (USFS) (Carothers 2019 and Carothers 2020, entire), the petition to list (Imper et al. 2016, entire), or the status review conducted by CDFW (2018, entire). However, field observations made by Service staff indicate that cheatgrass is present adjacent to the Mount Lassic population and the invasion has increased in recent years (Service 2023, figure 4.4; Hutchinson 2020, field observation). Dense stands of cheatgrass were also noted in 2019 and 2020, in the vicinity of the Mount Lassic population, but not within the population itself (Hutchinson 2020, field observation). Other *Bromus* spp. have been documented on serpentine soils, with an increased prevalence along edges of small patches of serpentine (Harrison et al. 2001, p. 45).

In general, nonnative, invasive plant species compete with native species for resources such as sunlight, water, and nutrients. While there is no evidence that cheatgrass is currently competing with Lassics lupine for these basic resource needs, the presence of this highly invasive species near the largest population is a concern because it could increase the frequency of fires in the area, add nitrogen to the soils, and increase the likelihood of invasion by other nonnative species. Currently, invasive species (particularly cheatgrass) are increasing in the areas adjacent to the Mount Lassic population and could influence fire severity but are not currently impacting Lassics lupine's viability. However, the impact of invasive species could increase in the future.

Conservation Efforts and Regulatory Mechanisms

The Lassics lupine was listed as endangered in 2019 by the California Fish and Game Commission (CFGC 2019, entire). State listing of the Lassics lupine ensures, among other things, that individuals conducting research that involves handling of the plant or plant material, including seeds, must be authorized under the California Fish and Game Code at section 2081(a). Additionally, projects that might impact the plant must be evaluated for significance under the California Environmental Quality Act. The California Native Plant Society (CNPS) categorizes this species as a California Rare Plant with a rank of 1B.1, meaning that it is rare, threatened, or endangered in California and elsewhere, and is seriously endangered in California. It has a State rank of S1, defined as critically imperiled or at very high risk of extinction due to extreme rarity, and a global rank of G1, meaning critically imperiled (CNPS 2021, unpaginated).

Both the Red Lassic and Mount Lassic populations are within the Lassics Botanical and Geologic Area of Six Rivers National Forest. Management of unique botanical features is directed by the Special Interest Management Strategy with a goal of managing for rare species and the natural processes that support them (U.S. Department of Agriculture (USDA) 1998, entire). Additionally, the Mount Lassic population, and 2,833 ha (7,000 ac) of the Mount Lassic Range, is within the Mount Lassic Wilderness Area, part of the Northern California Coastal Wild Heritage Wilderness Act of 2006 (Pub. L. 109–362, October 17, 2006, 120 Stat. 2064). Designation as wilderness affords protection from most direct anthropogenic threats except from trampling from foot traffic and illegal off-highway vehicle (OHV) use. Additionally, Lassics lupine is designated a sensitive species by the Six Rivers National Forest, meaning that management decisions made by the Forest will not result in a trend towards Federal listing or loss of viability (USDA 1997, entire).

A conservation strategy has been signed by the Six Rivers National Forest and is focused on Lassics lupine monitoring and research, as well as potential conservation actions for the species. This strategy does not currently include a commitment to allocate funds for conservation actions, but does outline goals and objectives, documents studies and management efforts to date, and identifies key actions that should be initiated or continued. Management efforts proposed in the strategy include continued caging of reproductive plants, continued monitoring, investigating the role of fire in population viability, continued seed banking and propagation efforts, and experimental prescribed burning (USDA 2020a, entire). Caging of reproductive plants

currently requires a substantial commitment of time from Service staff, Six Rivers National Forest staff, and volunteers. Changes in staff and available resources mean that implementation has fluctuated in the past and this could continue into the future.

Attempts to augment the populations or establish populations in nearby areas with similar soil types have been largely unsuccessful. Additionally, seed is banked in two locations: 74 seeds have been deposited at the Berry Botanic Garden in Portland, Oregon, and 439 seeds have been deposited at the National Laboratory for Genetic Resource Preservation (NLGRP) in Fort Collins, Colorado. The conservation strategy and the Six Rivers National Forest will prioritize augmenting the collection at NLGRP (USDA 2020b, p. 1).

Species Condition

To assess the current condition of the Lassics lupine, we used recent monitoring data and results from the recent PVA (Kurkjian et al. 2017, entire) to score the current condition of each analysis unit based on our assessment of habitat and demographic variables. For each analysis unit, we assess habitat quantity, habitat quality, and abundance of Lassics lupine.

Habitat variables were categorized using largely qualitative information while demographic variables were analyzed quantitatively, which corresponds with the best available information for each variable. Each variable in an analysis unit was assigned a current condition of high, moderate, or low (Service 2023, table 5.1). The average score was then used to rate the overall current condition of each analysis unit. When a score fell between two condition categories, the overall current condition was assigned consistent with the condition of the majority of the parameters. In other words, if two of the three parameters were low and one was moderate, the overall condition was rated as low. A population that is in low condition is one where resources are in overall low condition. A similar definition applies to moderate and high conditions.

Habitat quantity is a description of the relative size of available habitat based on both available soil type information and the amount of habitat available compared to historical conditions. This information was qualitatively scored based on the most recently available site observations. Because Lassics lupine has likely always been narrowly restricted, we chose not to assess the total area occupied by each analysis unit but rather to look at the relative size of each analysis unit. Furthermore, because Lassics lupine is highly influenced by vegetation encroachment (habitat that supports pre-dispersal seed predators), we also considered the amount of habitat available currently compared with historical habitat availability based on aerial photographs.

Habitat quality is a description of the solar insolation, influenced by aspect and canopy cover, for each analysis unit. Because solar insolation directly influences available soil moisture, and both influence the survival and vigor of Lassics lupine individuals and populations, we used solar insolation as a surrogate to describe habitat quality. The Lassics lupine demonstrates higher fecundity and vigor in areas with a suitable range of solar insolation. Areas with suitable solar insolation are defined as either occurring on the north aspect of a slope (most areas in the Mount Lassic population) or are located nearby within moderately open canopy Jeffrey pine forests where trees provide some shade. Suboptimal areas are those with either slightly too much shading or slightly too little shading, and unsuitable areas are those without any shading from either orographic cover or adjacent trees. Areas within a suitable range of solar insolation conditions were defined as ''high'' condition, areas within a suboptimal range of solar insolation as ''moderate'' condition, and unsuitable areas as ''low'' condition. This information was also qualitatively scored based on recent site observations.

Abundance is often used as a metric to assess the overall status of plant species. Abundance data represent the total number of adult vegetative and reproductive plants present in each analysis unit. Abundance categories were defined as ''low'' (fewer than 100 plants), ''moderate'' (100 to 500 plants), and ''high'' (more than 500 plants). These rating categories were derived using the estimated overall MVP adapted from Pavlik (1996, p. 137). Rather than use abundance data from one year, we report a range of years that reflects the range observed from data collected during annual monitoring from 2015–2022 by Six Rivers National Forest staff and volunteers (see chapter 5 of the SSA report for more details). We considered that abundance is significantly higher than it would be without the current practice of caging a large portion of adult plants each year. Caging has occurred at some level since approximately 2003, with the percentage of caged plants increasing gradually over time; current caging levels vary from 60–100 percent, varying between population and year.

We assessed the two populations (Red Lassic and Mount Lassic) as delineated by CNDDB, which defines populations as groups of individual plants that are separated by approximately 0.4 km (0.25 mi). We then further considered three subpopulations of the Mount Lassic population for a total of four analysis units, three of which are subpopulations of Mount Lassic (*i.e.,* Saddle, Terrace, and Forest) and one of which is the Red Lassic population. There are also Lassics lupine plants outside of the transects we analyzed. These individuals largely occur on steep slopes that are not accessible to surveyors without causing significant erosion or damage to plants and surveys are generally conducted with binoculars in order to avoid disturbing the soil.

The results of our analysis are presented in table 1 below, and additional detail on populations, analysis units, and individuals outside those units is available in the SSA report (Service 2023, pp. 36–39)

TABLE 1—CURRENT CONDITION DATA FOR EACH ANALYSIS UNIT WITH OVERALL CURRENT CONDITION SUMMARIZED

	Habitat quantity	Habitat quality	Abundance range (mean)	Overall current condition
Red Lassic	Relatively small, reduced from historical amounts.	Unsuitable (south aspect without tree cover).	0–320 (129)	Low.
Saddle	Relatively moderately-sized, but reduced from historical amounts.	Suitable solar insolation	14–284 (184)	Moderate.
Terrace	Relatively small, reduced from historical amounts.	Suitable solar insolation	33–135 (79)	Low.

TABLE 1—CURRENT CONDITION DATA FOR EACH ANALYSIS UNIT WITH OVERALL CURRENT CONDITION SUMMARIZED—Continued

	Habitat quantity	Habitat quality	Abundance range (mean)	Overall current condition
Forest	Relatively small, reduced from historical amounts.	Suboptimal (north aspect combined with moderate canopy).	12–85 (48)	Low.

Having assessed the current condition of the two known populations, we now consider the resiliency, redundancy, and representation of the Lassics lupine. In total, two of the three subpopulations of the Mount Lassic population are considered in low overall current condition, and one is in moderate overall current condition. As described above, our abundance metric spans a range of years and demonstrates fluctuations in numbers of flowering plants. Also, as described above under *Species Needs,* current population sizes are too small to withstand current rates of seed predation without significant management efforts. Most species' populations fluctuate naturally, responding to various factors such as weather events, disease, and predation. These factors have a relatively minor impact on species with large, stable local populations and a wide and continuous distribution. However, populations that are small, isolated by habitat loss or fragmentation, or impacted by other factors are more vulnerable to extirpation by natural, randomly occurring events (such as predation or stochastic weather events), and to genetic effects that impact small populations (Purvis et al. 2000, p. 1949). Small populations are less able to recover from random variation in their population dynamics and environment (Shaffer and Stein 2000, pp. 308–310), such as fluctuations in recruitment (demographic stochasticity), variations in rainfall (environmental stochasticity), or changes in the frequency of wildfires.

While some analysis units have high to moderate habitat quality, the overall current conditions are driven by small population sizes and a limited amount of available habitat. The Red Lassics population is also in overall low current condition. Resiliency is low for both populations.

With regard to redundancy, there are currently close to 800 Lassics lupine adult plants existing in two populations in a roughly 1-square-kilometer area. One of the populations is in overall low condition while the other population is comprised of three subpopulations of which two are in low condition and one is in moderate condition. When considering the overall condition of the Mount Lassic population (the three subpopulations plus plants outside of the transects), it is still in overall low condition. Our analysis of redundancy concludes that both populations are in low resiliency and a single catastrophic event could heavily impact both populations even though the populations are well-distributed throughout the species' historical range. Thus, species redundancy is reduced from the historical condition.

With regard to representation, as a narrow endemic, the Lassics lupine is highly specialized and restricted to its ecological niche. Suitable habitat is narrowly distributed on mountaintops and is becoming increasingly limited due to encroachment of forest and chaparral vegetation. Both populations share similar features, with the differences being largely related to the aspect on which each is positioned and amounts of canopy cover and corresponding isolation and soil moisture. Both populations are susceptible to seed predation and vegetation encroachment. The best available data do not indicate any potential genetic differentiation across the range of the species, and representation units correspond with our analysis units, which generally align with different ecological settings. Although populations and subpopulations of the species remain extant across each of the ecological settings, resiliency is low for both populations.

Representation is not only gauged by ecological and genetic diversity, but also by the species' ability to colonize new areas. Currently, populations of Lassics lupine are small and isolated by tracts of unsuitable habitat. The lack of connectivity between populations and overall small size may result in reduced gene flow and genetic diversity, rendering the species less able to adapt to novel conditions. Further, the lack of available and unoccupied suitable habitat leaves less opportunity for an adaptable species to exploit new resources outside of the area it currently occupies. Thus, while ecological diversity is generally low for this highly specialized species, the limited availability of unoccupied habitat in suitable condition also likely limits the potential for this species to adapt to environmental changes.

As mentioned previously, quantitative data on habitat condition could be misleading for a narrow endemic, so we relied on qualitative assessments relative to historical availability of habitat and the expert opinion of those familiar with the populations as the best scientific data available. Detailed genetic information is not available for this species, nor do we know the minimum number of individuals that would be required to sustain a population, or the minimum number of populations required to sustain the species. Nonetheless, the evidence that does exist points to a species that is heavily impacted by variable weather patterns and by high rates of seed predation, likely exacerbated by vegetation encroachment.

Future Condition

As part of the SSA, we also developed three future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the Lassics lupine. Our scenarios examined possible future impacts of seed predation, climate change, and fire. Because we determined that the current condition of the Lassics lupine was consistent with an endangered species (see Determination of Lassics Lupine's Status, below), we are not presenting the results of the future scenarios in this final rule. Please refer to the SSA report (Service 2023, pp. 42–50) for the full analysis of future scenarios.

Determination of Lassics Lupine's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The

Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

In this final rule, we present summary evaluations of six threats analyzed in the SSA report for the Lassics lupine (Service 2023, entire): vegetation encroachment (Factor A), seed predation and herbivory (Factor C), fire (Factor A), climate change effects (Factor E), and invasive species (Factor A). We also evaluate existing regulatory mechanisms (Factor D) and ongoing conservation measures.

In the SSA, we also considered the following additional threats: overutilization due to commercial, recreational, educational, and scientific use (Factor B); disease (Factor C); and recreation (Factor E). We concluded that, as indicated by the best available scientific and commercial information, these threats are currently having little to no impact on the Lassics lupine, and thus their overall effect now and into the future is expected to be minimal. However, we consider them in our determination of status for the Lassics lupine, because although these minor threats may have low impacts on their own, combined with impacts of other threats, they could further reduce the already low number of Lassics lupine plants.

For full descriptions of all threats and how they impact the species, please see the SSA report (Service 2023, pp. 22–33).

Based on historical records, it appears that the Lassics lupine has always had a limited range. However, in recent decades, the species has experienced a reduction of its range. As woody vegetation encroachment (Factor A) has affected occupied Lassics lupine habitat, the population of small mammals has increased, resulting in pre-dispersal seed predation (Factor C) that has affected up to 95 percent of flowering plants. Ongoing efforts to cage all adult plants have greatly reduced the magnitude of pre-dispersal seed predation, and our assessment of population abundance and habitat quality for the species from recent surveys indicates that the Lassics lupine population size is relatively stable. While population levels are currently stable, given the high rates of seed predation documented prior to caging (up to 95 percent of seeds consumed pre-dispersal), they would not be stable without the annual effort of caging individual plants. Caging is not guaranteed to continue and requires significant investment of time and resources twice per year to implement. Additionally, habitat quantity and quality are reduced compared to historical levels with the remaining populations being small in size and occupying a small area. The current abundance and recruitment levels are sustained only through management actions, specifically caging of a large proportion of reproductive individuals.

In recent years, fire (Factor A) impacted the Red Lassic population, killing both individual Lassics lupine plants and the overstory that was providing necessary shade to the species. Any future mixed- or high-severity fire could provide further loss of adult Lassics lupine plants and damage the habitat features necessary for their survival. Additionally, earlier snowmelt date, reduced summer precipitation, and higher summer temperatures associated with climate change (Factor E) have resulted in a loss of soil moisture in the shallow soils where the Lassics lupine is found. Further, invasive species (Factor A) are encroaching near Lassics lupine populations, although the magnitude of this threat is currently low.

Under the current condition, the Lassics lupine remains distributed throughout its historical range, but resiliency is low for both populations and across all ecological settings. Overall current condition is ranked as low in three of the four analysis units. Although representation is maintained at current levels throughout the range, population resiliency and species redundancy are both low, especially as compared to historical conditions. The current small size of Lassics lupine populations makes the species less able to withstand the threats that are currently impacting the species.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the Lassics lupine is currently facing high-magnitude threats from vegetation encroachment, pre-dispersal seed predation, fire, and reduced soil moisture associated with ongoing effects of climate change. Although ongoing management actions are helping to reduce the magnitude of seed predation, the majority of Lassics lupine individuals are concentrated in a single population that has a reduced ability to withstand both catastrophic events and normal year-to-year fluctuations in environmental and demographic conditions. These threats are impacting the species now. Thus, after assessing the best available information, we determine that the Lassics lupine is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Lassics lupine is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portions of its range. Because the Lassics lupine warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Lassics lupine meets the Act's definition of an endangered species. Therefore, we are listing the Lassics lupine as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and

threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/program/endangered-species*), or from our Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Lassics lupine. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for the Lassics lupine. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us.

Federal agency actions within the species' habitat that may require consultation as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the USFS (Six Rivers National Forest).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, make it illegal for any person subject to the jurisdiction of the United States to import or export; remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce an endangered plant. Certain exceptions apply to employees of the Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits for endangered plants are codified at 50 CFR 17.62. With regard to endangered plants, a permit may be issued for scientific purposes or for enhancing the propagation or survival of the species. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. As discussed above, certain activities that are prohibited under section 9 may be permitted under section 10 of the Act. In addition, to the extent currently known, the following activities will not be considered likely to result in violation of section 9 of the Act:

(1) Vegetation management practices, such as hand-pulling invasive species and trail maintenance outside the populations that are carried out in accordance with any existing regulations and best management practices;

(2) Research activities that are carried out in accordance with any existing regulations and permit requirements;

(3) Vehicle use on existing roads in compliance with the Six Rivers National Forest land management plan; and

(4) Recreational use (*e.g.,* hiking and walking) with minimal ground disturbance on existing designated trails.

This list is intended to be illustrative and not exhaustive; additional activities that will not be considered likely to result in violation of section 9 of the Act may be identified during coordination

with the local field office, and in some instances (*e.g.,* with new information), the Service may conclude that one or more activities identified here will be considered likely to result in violation of section 9.

To the extent currently known, the following is a list of examples of activities that fall under the prohibitions set forth at 50 CFR 17.61 and that will be considered likely to result in violation of section 9 of the Act:

(1) Unauthorized collecting, handling, removing, possessing, selling, delivering, carrying, or transporting of the species, including transport across State lines and import or export across international boundaries; and

(2) Destruction or alteration of the species by unauthorized vegetation management, trail maintenance, or research activities.

This list is intended to be illustrative and not exhaustive; additional activities that will be considered likely to result in violation of section 9 of the Act may be identified during coordination with the local field office, and in some instances (*e.g.,* with new or site-specific information), the Service may conclude that one or more activities identified here will not be considered likely to result in violation of section 9.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would likely result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that

habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Geological Substrate and Soils

The Lassics lupine occurs on or in the vicinity of serpentine soils in the Lassics Mountains, mainly on barren slopes with very shallow soil and low organic matter, or less commonly, near edges of Jeffrey pine forests. Most plants occur on flat or steep slopes with high proportions of gravel or cobble on the surface. The Lassics Range occurs in the central Franciscan Belt of the California Coast Ranges. This area is characterized by moderately steep to very steep slopes and a complex assemblage of rocks primarily composed of the Franciscan Complex, the Coast Range Ophiolite, and the Great Valley Sequence (Kaplan 1984, p. 203; Krueger 1990, p. 1). The sources of these complexes range from oceanic crusts to underlying mantle that was forced to the surface by thrusts originating from great distances. The serpentine rocks are present due to extreme disruptions of faulting and folding (Alexander 2008, p. 1). These soil parent materials and the natural erosion on the landscape determine the soil features present today. Both fluvial erosion and mass wasting have been important geologic processes in the Lassics area (Alexander 2008, p. 1).

Lassics lupine occurs across four described soil units that are all characterized as either serpentine and/or clastic (composed of pieces of older rocks) sedimentary rocks (Alexander 2008, pp. 2–3). Serpentine soils in general are characterized by their relatively high levels of magnesium and iron, while being simultaneously low in calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1985, p. 18; Alexander 2011, p. 28). Additional soil analyses demonstrated that all soils supporting Lassics lupine are characterized by similar sand content (81 to 91 percent) and similar concentrations of heavy minerals and nutrients (specifically phosphorus, potassium, calcium, copper, iron, zinc, total carbon, total nitrogen, and extractable aluminum) when compared with nearby soils. Nearby soils that do not support Lassics lupine revealed lower sand content and slightly higher pH. Few additional sites meet the Lassics lupine soil requirements identified by these two investigations. Given the narrow range of suitable soils, it is unlikely that the species was significantly more widespread in the area historically (Imper 2012, pp. 1–28).

The Lassics lupine occurs in an area that typically experiences hot, dry summers and snow coverage for up to 7 months a year from late fall through spring. The soils are fast draining and generally infertile, as described above. The general inability for the surrounding soil to retain moisture and/or nutrients results in potentially increased impacts from climate variables such as rainfall, snowmelt, and soil temperature.

Both Lassics lupine populations occur at the top of the Little Van Duzen River watershed, which drains into the Van Duzen River, the Eel River, and then the Pacific Ocean. The primary sources of water for Lassics lupine plants are snowmelt and rainfall, some of which is available as groundwater after weather events.

Lassics lupine habitat is typically covered in snow for many winter months, with soil temperatures close to freezing and high moisture content. Demographic monitoring data suggest that earlier snowmelt dates are negatively correlated with survival of Lassics lupine plants that year, especially during years of lower summer rainfall (Imper 2012, pp. 142–143). The date of snowmelt is influenced by the amount and type of precipitation in the winter (rain versus snow) and temperatures. Increased snow cover later in the season is assumed to provide greater water infiltration into the soils, therefore increasing the amount of

available moisture to Lassics lupine plants and decreasing desiccation of overwintering plants.

Soil temperatures increase dramatically after snow has melted due to lack of cover and vary with aspect. These temperatures continue to increase into August. Soil moisture typically remains high in the weeks following snowmelt and then decreases gradually, with some spikes based on summer precipitation events. Areas occupied by Lassics lupine have both high light levels and high available soil moisture in August compared to unoccupied habitat nearby (Imper 2012, pp. 91–92). Most areas are located on a north aspect or have some tree cover, both of which decrease insolation and increase available soil moisture. Some areas occupied by Lassics lupine are adjacent to mature trees and experience lower soil temperatures due to shading and decreased insolation; these areas generally appear to be less suitable for Lassics lupine based on decreased reproductive vigor and growth rates. Most of these forested areas experience rapid decreases in available soil moisture earlier in the growing season, likely due to water demands of nearby trees (Imper 2012, pp. 91–92). The exception to this is the Red Lassic population, where there is a seasonally wet area perched above the population that allows for increased moisture to be available later in the season.

When it occurs, summer rainfall appears to be beneficial for Lassics lupine's survival, with lower mortality in years with more precipitation during the growing season (Imper 2012, pp. 142–143). In late summer, when available soil moisture is low and soil temperatures are high, there is the risk of desiccation of seedlings and mature plants. In years when summer rainfall is low and summer temperatures are high, there is increased mortality. The effects of these conditions are exacerbated by early or decreased snowmelt.

Therefore, suitable soils are generally fast-draining and include serpentine and clastic soils, with very shallow soil and low organic matter. These soils are also characterized as receiving sufficient snow and rain for seed germination and moisture for growing plants; containing relatively high levels of magnesium and iron, while being simultaneously low in calcium, nitrogen, potassium, and phosphorus; and having relatively high sand content.

Ecological Community

The area immediately surrounding Lassics lupine habitat is characterized by Jeffery pine and incense cedar forest, chaparral, and largely unvegetated serpentine barrens. The predominant canopy cover is provided by Jeffrey pine and incense cedar, with white fir (*Abies concolor)* being prevalent on nonserpentine forest soils of the Lassics (Alexander 2008, entire). The primary chaparral species are pinemat manzanita, mountain whitethorn (*Ceanothus cordulatus*), buckbrush (*Ceanothus cuneatus*), and various herbaceous species. Chaparral habitats occur primarily on the south-facing slopes and forest habitats on the north-facing slopes.

The majority of Lassics lupine plants occur on serpentine barrens around Mount Lassic with patchy, or no, tree and shrub cover. Several small herbs and geophytes, including other rare species, occur on these serpentine barrens and have been documented over the past few decades (for more detail see Nelson and Nelson 1983, entire; Cate 2016, pp. 7–8; Imper and Elkins 2016, p. 11). Some plants occur in closed-canopy Jeffrey pine-incense cedar forest farther downslope on the north aspect of Mount Lassic. Plants in this area show decreased vigor and growth, assumed to be attributed to reduced light and water and increased leaf litter (Imper 2012, p. 140). A third habitat setting, at Red Lassic, is dominated by Jeffrey pine and pinemat manzanita and occurs on a south to southeast aspect.

Most *Lupinus* species require outcrossing for effective fertilization of flowers. All *Lupinus* species have specialized pollination mechanisms that require animal pollinators to carry pollen from one individual to another. While the Lassics lupine may be capable of some level of self-pollination, it is also visited at high rates by three bee species: yellow-faced bumblebee, black-tailed bumblebee, and a mason bee species (*Osmia* spp.) (Crawford and Ross 2003, p. 2). All three of the bee species appear to be capable pollinators given that they are large enough to trigger the mechanism that releases pollen from the individual flowers (Crawford and Ross 2003, p. 3).

Successful transfer of pollen among Lassics lupine populations may be inhibited if populations are separated by distances greater than pollinators can travel and/or if a pollinator's nesting or foraging habitat and behavior is negatively affected (Cranmer et al. 2012, p. 562; Dorchin et al. 2013, entire). Flight distances are generally correlated with body size in bees; larger bees are able to fly farther than smaller bees (Gathmann and Tscharntke 2002, entire; Greenleaf et al. 2007, pp. 592–594). There is evidence to suggest that larger bees, which are able to fly longer distances, do not need their habitat to remain contiguous, but it is more important that the protected habitat is large enough to maintain floral diversity (Greenleaf et al. 2007, p. 594). While researchers have reported long foraging distance for solitary bees, the majority of individuals remain close to their nest; thus, foraging distance tends to be 1,640 ft (500 m) or less (Antoine and Forrest 2021, p. 152). The most common bee and wasp pollinators have a fixed location for their nest, and thus their nesting success is dependent on the availability of resources within their flight range (Xerces 2009, p. 14).

Many insect communities are known to be influenced not only by local habitat conditions, but also the surrounding landscape condition (Klein et al. 2004, p. 523; Xerces 2009, pp. 11–26; Tepedino et al. 2011, entire; Dorchin et al. 2013, entire; Inouye et al. 2015, pp. 119–121). In order for genetic exchange of Lassics lupine to occur, pollinators must be able to move freely between populations. Alternative pollen and nectar sources (other plant species within the surrounding vegetation) are needed to support pollinators during times when Lassics lupine is not flowering. Conservation strategies that maintain plant-pollinator interactions, such as maintenance of diverse, herbicide-free nectar resources, would serve to attract a wide array of insects, including pollinators of Lassics lupine (Cranmer et al. 2012, p. 567). Therefore, Lassics lupine habitat must also support populations of bee species that, in turn, require abundant, diverse sources of pollen and nectar.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Lassics lupine from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2023, entire; available on *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0083). We have determined that the following physical or biological features are essential to the conservation of the Lassics lupine:

(1) A plant community that consists of the following:

(a) Areas of open to sparse understory to ensure competition with Lassics lupine is inhibited. When sparse understory is present, the composition is predominantly native vegetation.

(b) Suitable solar insolation levels to support growth. These suitable levels can be achieved by the appropriate combination of canopy cover and aspect, with hotter and drier west-facing

slopes needing moderate and more protective canopy cover compared to cooler north-facing slopes where there can be little to no canopy cover.

(c) A diversity and abundance of native plant species whose blooming times overlap to provide pollinator species with pollen and nectar sources for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nest materials; and sheltered, undisturbed habitat for hibernation and overwintering of pollinator species and insect visitors.

(2) Sufficient pollinators, particularly bees, for successful Lassics lupine reproduction and seed production.

(3) Suitable soils and hydrology that consist of the following:

(a) Open, relatively barren, upland sites categorized as receiving sufficient snow and rain for seed germination and moisture for growing plants.

(b) Soils that are generally fast-draining, including serpentine or clastic (composed of pieces of older rocks) soils, with very shallow soil and low organic matter.

(c) Soils characterized by their relatively high levels of magnesium and iron, while being simultaneously low in calcium, nitrogen, potassium, and phosphorus.

(d) Soils characterized by relatively high sand content.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: pre-dispersal seed predation, native woody vegetation encroachment, invasive species encroachment, and the ability to withstand drought due to climate change. Management activities that could ameliorate these threats include, but are not limited to: (1) Caging plants to reduce the threat of pre-dispersal seed predation; (2) habitat restoration activities that include the removal of woody vegetation; (3) removal of nonnative, invasive species; and (4) augmentation and reintroduction programs to expand Lassics lupine populations.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not designating any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat.

We are designating one occupied critical habitat unit for the Lassics lupine. The one unit is comprised of approximately 512 ac (207 ha) of land in Humboldt and Trinity Counties, California, and is completely on lands under Federal (USFS) land ownership. The unit was determined using location information for Lassics lupine after extant population boundaries were collected in 2018 by Six Rivers National Forest staff around Mount Lassic with global positioning system (GPS) units. This dataset was provided to the Arcata Fish and Wildlife Office. This unit includes the physical footprint of where the plants currently occur, as well as their immediate surroundings out to 1,640 ft (500 m) in every direction from the periphery of each population. This area of surrounding habitat contains components of the physical and biological features (*i.e.,* the pollinator community and its requisite native vegetative assembly), necessary to support the life-history needs of the Lassics lupine.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological features necessary for the Lassics lupine. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action will affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat areas that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. The critical habitat unit is designated based on all of the physical or biological features being present to support the Lassics lupine's life-history processes.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more-detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R8–ES–2022–0083, and on our internet site at *https://www.fws.gov/species/lassics-lupine-lupinus-constancei.*

Final Critical Habitat Designation

We are designating one unit as critical habitat for the Lassics lupine. The critical habitat area we describe below constitutes our current best assessment of the area that meets the definition of critical habitat for the Lassics lupine. The area we designate as critical habitat is in the Mount Lassic area. Table 2 shows the critical habitat unit and its approximate area.

TABLE 2—FINAL CRITICAL HABITAT UNIT FOR THE LASSICS LUPINE

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
Mount Lassic Unit	Federal (USFS)	512 (207)	Yes.

We present a brief description of the unit and reasons it meets the definition of critical habitat for the Lassics lupine, below.

Mount Lassic Unit

The Mount Lassic Unit consists of 512 ac (207 ha) of USFS land. This unit is located on the border of Humboldt and Trinity Counties, California, surrounding Mount Lassic and Red Lassic peaks. All of this unit is on Federal land managed solely by the Six Rivers National Forest. This unit is currently occupied and contains two populations of Lassics lupine consisting of less than 4 ac (1.6 ha) total. This unit is essential to the recovery of Lassics lupine because it includes all the habitat that is occupied by Lassics lupine across the species' range. This unit currently has all the physical or biological features essential to the conservation of the species, including open to sparsely vegetated areas with low native plant cover and stature; nesting, egg-laying, and foraging habitat for pollinator species and insect visitors; and suitable soils with appropriate textures and chemistry. This unit faces threats from encroaching woody vegetation and high-severity fire and drought due to climate change. Cheatgrass occurs within and adjacent to this unit and has encroached within 100 ft of individual plants. Special management may be required to mitigate future impacts to Lassics lupine. It is likely that there is room for expansion of the species in this unit provided that woody vegetation management occurs to further limit pre-dispersal seed predation and improve the quality of solar insolation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

Compliance with the requirements of section 7(a)(2) of the Act is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action. The reinitiation requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management in certain circumstances).

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, wildfire operations and management within or adjacent to occupied areas. Such activities could include, but are not limited to, construction of new access roads, use of heavy equipment, and use of fire retardant. These activities could significantly reduce the species' population size and range, and could remove corridors for pollinator movement, seed dispersal, and population expansion or significantly fragment the landscape and decrease the resiliency and representation of the species throughout its range.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in

writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no DoD lands of any kind within this critical habitat designation for the Lassics lupine.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (2016 Policy; 81 FR 7226, February 11, 2016)—both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

The Secretary may exclude any particular area if she determines that the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In this final rule, we are not excluding any areas from critical habitat.

Exclusions Based on Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our economic analysis of the critical habitat designation and related factors (IEc 2022, entire). The analysis, dated March 16, 2022, was made available for public review from October 6, 2022, through December 5, 2022 (87 FR 60612; October 6, 2022). The economic analysis addressed probable economic impacts of critical habitat designation for the Lassics lupine. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Lassics lupine is summarized below and available in the screening analysis for the Lassics lupine (IEc 2022, entire), available at *https://www.regulations.gov.*

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for the Lassics lupine, first we identified probable incremental economic impacts associated with the following categories of activities: fuels reduction, trail maintenance, invasive plant removal, habitat restoration, Forest Route 1S07 operation and maintenance, protective plant caging and population monitoring, prescribed fire, population management, and cattle exclusion. We considered each industry or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Lassics lupine is present, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. Our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Lassics lupine's critical habitat. Because the designation of critical habitat for the Lassics lupine is being adopted concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm to constitute jeopardy to the Lassics lupine would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this designation of critical habitat.

The critical habitat designation for the Lassics lupine consists of a single unit totaling 512 ac (207 ha). This unit is occupied and falls entirely within federally owned land within the boundary of the Six Rivers National Forest.

The screening analysis concluded that the anticipated number of consultations and associated costs will be small and will be limited to administrative efforts to consider adverse modification. This is because the single critical habitat unit is relatively small and because it occurs entirely on Federal lands, including a large portion of the unit that is in a designated wilderness area. The analysis predicts that there will be approximately 10 formal consultations over the next 10 years and will result in approximately $5,400 in incremental costs per year (IEc 2022, p. 10, exhibit 3). Few other additional costs are anticipated. Overall, the additional administrative burden is anticipated to fall well below the $200 million annual threshold.

As discussed above, we considered the economic impacts of the critical habitat designation, and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Lassics lupine based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we determined that there are no lands within the

designated critical habitat for the Lassics lupine that are owned or managed by the DoD or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the public comment period for the proposed designation regarding impacts of the designation on national security or homeland security that would support excluding any specific areas from the final critical habitat designation under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19, as well as the 2016 Policy.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security as discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs), or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

We are not excluding any areas from critical habitat. In preparing this final rule, we have determined that there are currently no HCPs or other management plans for the Lassics lupine, and the designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this final critical habitat designation. We did not receive any additional information during the public comment period for the proposed rule regarding other relevant impacts to support excluding any specific areas from the final critical habitat designation under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19, as well as the 2016 Policy. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and following recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, we certify that this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period on the October 6, 2022, proposed rule (87 FR 60612) that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our

certification that this critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects ''to the extent permitted by law'' when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a ''significant energy action'' as an action that (i) is a significant regulatory action under E.O. 12866 (or any successor order, including most recently E.O. 14094 (88 FR 21879; Apr. 11, 2023)); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or 14094. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because only Federal lands are included in the designation. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Lassics lupine in a takings implications assessment. The Act does not authorize us to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the Lassics lupine does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, this final rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical

habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the physical or biological features essential to the conservation of the species. The areas of designated critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the critical habitat designation for the Lassics lupine, so no Tribal lands will be affected by this designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Arcata Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, in paragraph (h), amend the List of Endangered and Threatened Plants by adding an entry for ''*Lupinus constancei*'' in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	*	*	*
Lupinus constancei	Lassics lupine	Wherever found	E	88 FR [INSERT **FEDERAL REGISTER** PAGE WHERE THE DOCUMENT BEGINS], 10/5/2023; 50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Amend § 17.96, in paragraph (a), by adding an entry for ''Family Fabaceae: *Lupinus constancei* (Lassics lupine)'' after the entry for ''Family Fabaceae: *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch)'', to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Fabaceae: *Lupinus constancei* (Lassics lupine)

(1) The critical habitat unit is depicted for Humboldt and Trinity Counties, California, on the map in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Lassics lupine consist of the following components:

(i) A plant community that consists of the following:

(A) Areas of open to sparse understory to ensure competition with Lassics lupine is inhibited. When sparse

understory is present, the composition is predominantly native vegetation.

(B) Suitable solar insolation levels to support growth. These suitable levels can be achieved by the appropriate combination of canopy cover and aspect, with hotter and drier west-facing slopes needing moderate and more protective canopy cover compared to cooler north-facing slopes where there can be little to no canopy cover.

(C) A diversity and abundance of native plant species whose blooming times overlap to provide pollinator species with pollen and nectar sources for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nest materials; and sheltered, undisturbed habitat for hibernation and overwintering of pollinator species and insect visitors.

(ii) Sufficient pollinators, particularly bees, for successful Lassics lupine reproduction and seed production.

(iii) Suitable soils and hydrology that consist of the following:

(A) Open, relatively barren, upland sites categorized as receiving sufficient snow and rain for seed germination and moisture for growing plants.

(B) Soils that are generally fast-draining, including serpentine or clastic (composed of pieces of older rocks) soils, with very shallow soil and low organic matter.

(C) Soils characterized by their relatively high levels of magnesium and iron, while being simultaneously low in calcium, nitrogen, potassium, and phosphorus.

(D) Soils characterized by relatively high sand content.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on November 6, 2023.

(4) Data layers defining the map unit were created based on surveys conducted with global positioning system (GPS) units collecting in WGS84 coordinates, and the critical habitat unit was then mapped using Universal Transverse Mercator (UTM) Zone 10N coordinates. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/arcata-fish-and-wildlife,* at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2022–0083, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

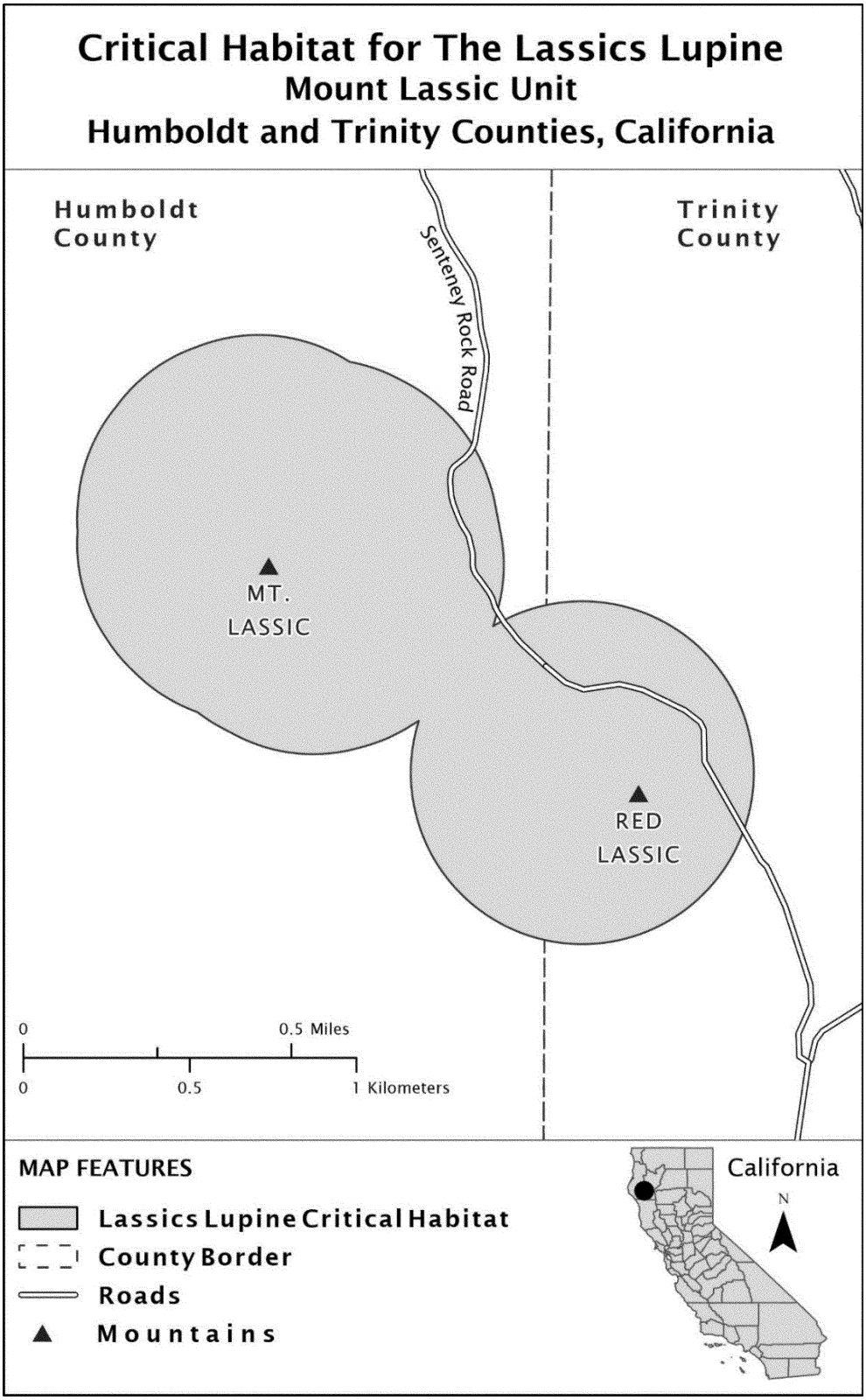
(5) Mount Lassic Unit, Humboldt and Trinity Counties, California.

(i) The Mount Lassic Unit consists of 512 acres (207 hectares) of land in Humboldt and Trinity Counties. The entirety of the unit falls within the boundary of the Six Rivers National Forest.

(ii) Map of the Mount Lassic Unit follows:

Figure 1 to Family Fabaceae: *Lupinus constancei* (Lassics lupine) paragraph (5)(ii)

BILLING CODE 4333–15–P


Critical Habitat for The Lassics Lupine
Mount Lassic Unit
Humboldt and Trinity Counties, California
Humboldt County
Trinity County
Senteney Rock Road
MT. LASSIC
RED LASSIC
0
0.5 Miles
0
0.5
1 Kilometers
MAP FEATURES
Lassics Lupine Critical Habitat
County Border
Roads
Mountains
California
N

* * * * *

Janine Velasco,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–21477 Filed 10–4–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220801–0167; RTID 0648–XD342]

Inseason Action for 2023–2024 Commercial Pacific Bluefin Tuna Biennial Catch Limit in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason announcement of 2023–2024 catch limit.

SUMMARY: NMFS is announcing that the Pacific bluefin tuna (PBF) 2023–2024 biennial catch limit for U.S. commercial fishing vessels in the eastern Pacific Ocean (EPO) is 1,054 metric tons (mt).

DATES: The rule is effective 12 a.m. local time November 3, 2023, through 11:59 p.m. local time December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Tyler Lawson, NMFS West Coast Region, 503–230–5421.

SUPPLEMENTARY INFORMATION: The United States is a member of the Inter-American Tropical Tuna Commission (IATTC), which was established under the Convention for the Establishment of an IATTC signed in 1949 (1949 Convention). The 1949 Convention provides an international agreement to ensure the effective international conservation and management of highly migratory species of fish in the IATTC Convention Area. In 2003, the IATTC updated the 1949 Convention through the adoption of the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The IATTC Convention Area, as amended by the Antigua Convention, includes the waters of the EPO bounded by the coast of the Americas, the 50° N and 50° S parallels, and the 150° W meridian.

Fishing for PBF in the EPO is managed, in part, under the Tuna Conventions Act of 1950, as amended (Act), 16 U.S.C. 951 *et seq.* Under the Act, NMFS must publish regulations to carry out recommendations and decisions of the IATTC in consultation with the Department of State. Regulations implementing conservation and management measures for tuna and tuna-like species in the EPO appear at 50 CFR part 300, subpart C.

On August 5, 2022, the NMFS published a final rule (87 FR 47939) implementing IATTC Resolution C–21–05 (Measures for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean). That rule established an initial combined catch limit for 2023–2024 of 1,017 mt. Under 50 CFR 300.25(g)(2), that initial catch limit is then either increased by the amount of catch remaining from, or decreased by the amount of catch in excess of, the 2021–2022 biennial catch limit, which was 739 mt. Any increase to the initial 2023–2024 catch limit cannot exceed 37 mt (see § 300.25(g)(2)(i)).

Based on landings data and other information available as of August 22, 2023, 587 mt of PBF were caught by U.S. commercial vessels during the 2021–2022 biennial management period (217 mt in 2021 and 370 mt in 2022). Therefore, in 2023–2024, the catch limit may be increased by 37 mt. Specifically, the 2023–2024 limit is increased from 1,017 to 1,054 mt. During the 2023–2024 biennial management period, the 1 year maximum of 720 mt remains unchanged for 2023. The annual catch limit for 2024 will be announced at the beginning of that year.

Notice of this inseason action that announces the biennial limit has also been posted on the NMFS website: *https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status.*

Classification

There is good cause to waive prior notice and an opportunity for public comment on this action under 5 U.S.C. 553(b)(B), as notice and comment would be impracticable, unnecessary, and contrary to the public interest. Under § 300.25(g)(2), NMFS determines the biennial catch limit for 2023–2024 by adjusting the initial catch limit of 1,017 mt to account for any over-harvest or under-harvest from the 2021–2022 biennial catch limit. The regulation provides NMFS with no discretion in setting the 2023–2024 biennial catch limit; therefore, public comment on this action is impracticable, unnecessary, and contrary to the public interest. Moreover, prior notice and an opportunity for public comment was provided when NMFS promulgated the regulation for determining the 2023–2024 biennial catch limit being implemented here. As previously noted, notification of the 2023–2024 biennial catch limit was also provided to the public through posting on the NMFS website.

This action is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951 *et seq.*

Dated: October 2, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–22219 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 192
Thursday, October 5, 2023

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 3550 and 3555

[Docket No. RHS–23–SFH–0007]

RIN 0575–AD32

Updating Manufactured Housing Provisions; Extension of Comment Period

AGENCY: Rural Housing Service, Department of Agriculture (USDA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is announcing an extension of the public comment period by 15 days for the notice of proposed rulemaking for the ''Updating Manufactured Housing Provisions.'' The intent of the extended comment period is to allow the public additional time to review and provide comments on the proposed changes.

DATES: The comment period for the proposed rule published on August 16, 2023, at 88 FR 55601, is extended. Comments must be received on or before October 31, 2023.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: *https://aiomostl0as096.usda.net/desktop/container/?locale=en_US-/home* (RHS–23–SFH–0007) or RIN# 0575–AD32, then click search. To submit or view public comments, select the following document title: (Updating Manufactured Housing Provisions) from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about Rural Development and its programs is available on the internet at *https://www.rurdev.usda.gov/index.html.*

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Sonya Evans, Finance & Loan Analyst, SFH Direct Loan Division, Rural Housing Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Phone: 423–268–4333, Email: *sonya.evans@usda.gov.* Or contact Stephanie Freeman, Finance & Loan Analyst, Policy, Analysis, and Communications Branch, Single Family Housing Guaranteed Loan Division, Rural Housing Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Phone: 314–457–6413, Email: *stephanie.freeman@usda.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 16, 2023 (88 FR 55601), the Agency published a proposed rule entitled, ''Updating Manufactured Housing Provisions.'' The intent of the proposed rule is to suggest Agency changes to the current regulations for the Single-Family Housing (SFH) Section 502 Direct and the SFH Guaranteed Loan Program to allow the Agency to give borrowers increased purchase options within a competitive market and increase adequate housing along with an enhanced customer experience with the SFH programs. The proposed rule initially provided a 60-day period for submission of public comments on or before October 16, 2023. The Agency is extending the comment period for public comments to October 31, 2023, to allow for additional review and submission time.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–22184 Filed 10–4–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1989; Project Identifier AD–2023–00512–E]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, LLC Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain International Aero Engines, LLC (IAE) Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines. This proposed AD was prompted by a report that certain high-pressure compressor (HPC) 2nd stage rotors and HPC 4th stage rotors have potentially degraded knife-edge seals and abrasive coating of the rear wing 4th stage rotor due to having been cleaned in alkaline solution without masking the knife-edge seal coating. Operating in this condition could result in material degradation and fracture of the HPC 2nd stage rotor and HPC 4th stage rotor. This proposed AD would require replacement of certain HPC 2nd stage rotors and HPC 4th stage rotors. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 20, 2023.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–1989; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For Pratt & Whitney service information identified in this NPRM, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.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.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7229; email: *mark.taylor@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1989; Project Identifier AD–2023–00512–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

The FAA was notified that on certain IAE Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines, a batch of HPC 2nd stage rotors and HPC 4th stage rotors could have degraded knife-edge seals and abrasive coating on the rear wing 4th stage rotor due to having been cleaned in alkaline solution without masking the knife-edge seal coating. Operating in this condition could result in material degradation and fracture of the HPC 2nd stage rotor and HPC 4th stage rotor. This condition, if not addressed, could result in uncontained part release or dual-engine shutdown, damage to the engine, damage to the airplane, and loss of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney Service Bulletin (SB) PW1000G–C–72–00–0208–00A–930A–D, Issue 001, dated September 13, 2022. This service information identifies the affected HPC 2nd stage rotors and HPC 4th stage rotors and specifies procedures for inspection and repair of the HPC 2nd stage rotors and HPC 4th stage rotors. 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**.

Proposed AD Requirements in This NPRM

This proposed AD would require replacement of the affected HPC 2nd stage rotor and HPC 4th stage rotor with parts eligible for installation.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 6 engines installed on airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPC 2nd stage rotor and HPC 4th stage rotor with repaired parts.	73 work-hours × $85 per hour = $6,205	$0	$6,205	$37,230

Operators may choose to use new parts instead of repaired parts to comply with this proposed AD. For replacement with new parts, the FAA estimates the following costs:

Action	Labor cost	Parts cost	Cost per product
Replace HPC 2nd stage rotor	32 work-hours × $85 per hour = $2,720	$312,000	$314,720
Replace HPC 4th stage rotor	32 work-hours × $85 per hour = $2,720	244,000	246,720

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines, LLC: Docket No. FAA–2023–1989; Project Identifier AD–2023–00512–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines, LLC Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines having a high-pressure compressor (HPC) 2nd stage rotor or HPC 4th stage rotor having a part number and serial number identified in the Applicability, Table 2, of Pratt & Whitney Service Bulletin (SB) PW1000G–C–72–00–0208–00A–930A–D, Issue 001, dated September 13, 2022 (Pratt & Whitney SB PW1000G–C–72–00–0208–00A–930A–D).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that certain HPC 2nd stage rotors and HPC 4th stage rotors have potentially degraded knife-edge seals and abrasive coating of the rear wing 4th stage rotor due to having been cleaned in alkaline solution without masking the knife-edge seal coating. The FAA is issuing this AD to prevent material degradation and fracture of the HPC 2nd stage rotor and HPC 4th stage rotor. The unsafe condition, if not addressed, could result in uncontained part release or dual-engine shutdown, damage to engine, damage to airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the next engine shop visit after the effective date of this AD, remove the HPC 2nd stage rotor having a part number and serial number identified in the Applicability, Table 2, of Pratt & Whitney SB PW1000G–C–72–00–0208–00A–930A–D and replace with a part eligible for installation.

(2) At the next engine shop visit after the effective date of this AD, remove the HPC 4th stage rotor having a part number and serial number identified in the Applicability, Table 2, of Pratt & Whitney SB PW1000G–C–72–00–0208–00A–930A–D and replace with a part eligible for installation.

(h) Definitions

(1) For the purposes of this AD, a ''part eligible for installation'' is:

(i) Any HPC 2nd stage rotor or HPC 4th stage rotor, as applicable, that does not have a part number and serial number identified in the Applicability, Table 2, of Pratt & Whitney SB PW1000G–C–72–00–0208–00A–930A–D; or

(ii) Any HPC 2nd stage rotor or HPC 4th stage rotor, as applicable, that has incorporated Pratt & Whitney SB PW1000G–C–72–00–0208–00A–930A–D.

(2) For the purposes of this AD, an engine shop visit is the induction of an engine into the shop for maintenance involving the separation of the ''H'' flange.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7229; email: *mark.taylor@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Service Bulletin PW1000G–C–72–00–0208–00A–930A–D, Issue 001, dated September 13, 2022.

(ii) [Reserved]

(3) For Pratt & Whitney service information identified in this AD, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*

(4) You may view this service information at 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 29, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22174 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1987; Project Identifier MCAI–2023–00807–T]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–17–02, which applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2021–17–02 requires a one-time inspection for discrepancies of the wire bundles between the left- and right-hand angle of attack (AOA) probes and the crew alerting computer, and, depending on findings, applicable corrective actions. AD 2021–17–02 also required for certain airplanes, modifying the captain stick shaker wiring, and for all airplanes, revising the existing aircraft flight manual (AFM) and applicable corresponding operational procedures to incorporate procedures for the stick pusher/shaker. Since the FAA issued AD 2021–17–02, a modification was developed to the affected wiring. This proposed AD would require installing a new AOA power supply unit and revising the existing AFM, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 20, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1987; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA ADs identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1987.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1987; Project Identifier MCAI–2023–00807–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–17–02, Amendment 39–21685 (86 FR 48490, August 31, 2021) (AD 2021–17–02), for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2021–17–02 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0024, dated January 19, 2021, to correct false

activation of the stall warning system due to wiring damage on the wire bundle between an AOA probe and the crew alerting computer.

AD 2021–17–02 requires a one-time inspection for discrepancies of the wire bundles between the left- and right-hand AOA probes and the crew alerting computer, and, depending on findings, applicable corrective actions. AD 2021–17–02 also required for certain airplanes, modifying the captain stick shaker wiring, and for all airplanes, revising the existing AFM and applicable corresponding operational procedures to incorporate procedures for the stick pusher/shaker.

Actions Since AD 2021–17–02 Was Issued

The preamble to AD 2021–17–02 explained that the FAA considered the requirements ''interim action'' and was considering further rulemaking. The FAA has now determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Since the FAA issued AD 2021–17–02, EASA superseded AD 2021–0024, dated January 19, 2021, and issued EASA AD 2023–0134, dated July 5, 2023 (EASA AD 2023–0134) (also referred to as the MCAI), to correct an unsafe condition for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. The MCAI states final modification instructions of the affected wiring were developed. This proposed AD requires installing a new AOA power supply unit, and removes the AFM amendment.

The FAA is proposing this AD to address false activation of the stall warning system, which could result in loss of control of the airplane during take-off and landing phases. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1987.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–17–02, this proposed AD would retain all of the requirements of AD 2021–17–02. Those requirements are referenced in EASA AD 2023–0134, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0134 specifies procedures for installing the AOA power supply unit and removing the AFM amendment. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2021–17–02. This proposed AD would require accomplishing the actions specified in EASA AD 2023–0134 described previously.

EASA AD 2023–0134 requires operators to amend the AFM to ''inform all flight crews'' of revisions to the AFM; and thereafter to ''operate the aeroplane accordingly.'' However, this AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable. Further, EASA AD 2023–0134 provides for the removal of the AFM amendment concurrently with the required modification.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0134 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0134 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0134 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0134. Service information required by EASA AD 2023–0134 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1987 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 26 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–17–02.	Up to 14 work-hours × $85 per hour = Up to $1,190.	$100	Up to $1,290	Up to $33,540.
New proposed actions	50 work-hours × $85 per hour = $4,250.	0	$4,250	$110,500.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–17–02, Amendment 39–21685 (86 FR 48490, August 31, 2021); and

■ b. Adding the following new Airworthiness Directive:

ATR—GIE Avions de Transport Régional: Docket No. FAA–2023–1987; Project Identifier MCAI–2023–00807–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 20, 2023.

(b) Affected ADs

This AD replaces AD 2021–17–02, Amendment 39 21685 (86 FR 48490, August 31, 2021) (AD 2021–17–02).

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 31, Instruments.

(e) Unsafe Condition

This AD was prompted by false activation of the stall warning system due to wiring damage on the wire bundle between an angle of attack (AOA) probe and the crew alerting computer, and the development of a wiring modification and aircraft flight manual (AFM) update to address the unsafe condition. The FAA is issuing this AD to address this condition, which could result in loss of control of the airplane during take-off and landing phases.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0134, dated July 5, 2023 (EASA AD 2023–0134).

(h) Exceptions to EASA AD 2023–0134

(1) Where EASA AD 2023–0134 refers to ''27 October 2020 [the effective date of EASA AD 2020–0221],'' this AD requires using ''December 3, 2020 (the effective date of AD 2020–23–13)''.

(2) Where EASA AD 2023–0134 refers to ''02 February 2021 [the effective date of EASA AD 2021–00024],'' this AD requires using ''October 5, 2021 (the effective date of AD 2021–17–02, Amendment 39–21330 (*85 FR 73407,* November 18, 2020))''.

(3) Where paragraph (2) of EASA AD 2023–0134 refers to ''discrepancies,'' for this AD, discrepancies include, but are not limited to, wire damage, missing or damaged conduits, and incorrect routing of wiring and conduits.

(4) Where paragraph (2) of EASA AD 2023–0134 specifies to ''contact ATR for approved instructions for corrective action and accomplish those instructions accordingly'' if discrepancies are detected; for this AD if any discrepancy is detected, the discrepancy must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Paragraphs (4), (5), and (6) of EASA AD 2023–0134 specify amending ''the applicable AFM [aircraft flight manual] of that aeroplane by inserting the AFM change provided in Appendix 1 of this [EASA] AD,'' however this AD requires amending ''the existing AFM and applicable corresponding operational procedures to incorporate the limitations and procedures specified in Appendix 1 of EASA AD 2023–0134.''

(6) Where paragraphs (4) and (5) of EASA AD 2023–0134 specify to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations (see 14 CFR 91.9, 91.505, and 121.137).

(7) Where EASA AD 2023–0134 refers to its effective date, this AD requires using the effective date of this AD.

(8) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0134.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0134, dated July 5, 2023 (EASA AD 2023–0134).

(ii) [Reserved]

(3) For EASA AD 2023–0134, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website *ad.easa.europa.eu.*

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

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

Issued on September 28, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22071 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1896; Project Identifier MCAI–2023–00837–T]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Saab AB, Support and Services Model SAAB 2000 airplanes. This proposed AD was prompted by a review of the anti-skid system revealed the possibility of inadvertently connecting the inboard harness to the outboard channel (and vice versa) of the wheel speed transducers in the main landing gear (MLG) wheel axles. This proposed AD would require installing color markings on the harnesses and the wheel axles, to ensure proper installation and connection of the anti-skid harnesses, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 20, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1896; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2023–1896.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1896; Project Identifier MCAI–2023–00837–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0135, dated July 10, 2023 (EASA AD 2023–0135) (also referred to as the MCAI), to correct an unsafe condition for all Saab AB, Support and Services Model SAAB 2000 airplanes. The MCAI states a system review of the anti-skid system revealed the possibility of inadvertently connecting the inboard harness to the outboard channel (and vice versa) of the wheel speed transducers in the main landing gear (MLG) wheel axles. To address the unsafe condition, the MCAI requires modification of the MLG and

connectors by installing color markings on the harnesses and the wheel axles, to ensure proper installation and connection of the anti-skid harnesses. This condition, if not detected and corrected, would lead to wrong inputs to the anti-skid function, whenever activated, with consequent reduced braking capability, possibly resulting in damage to the airplane.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1896.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0135 specifies procedures for modifying the left- and right-hand MLG and connectors with color markings.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0135 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0135 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0135 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0135 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0135. Service information required by EASA AD 2023–0135 for compliance will be available at regulations.gov under Docket No. FAA–2023–1896 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 17 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
10 work-hours × $85 per hour = $850	$1,740	$2,590	$44,030

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics): Docket No. FAA–2023–1896; Project Identifier MCAI–2023–00837–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Saab AB, Support and Services (formerly known as Saab AB,

Saab Aeronautics) Model SAAB 2000 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a review of the anti-skid system revealed the possibility of inadvertently connecting the inboard harness to the outboard channel (and vice versa) of the wheel speed transducers in the main landing gear (MLG) wheel axles. The FAA is issuing this AD to address incorrect connections of the harnesses to the wheel speed transducers. The unsafe condition, if not addressed, could result in wrong inputs to the anti-skid function, whenever activated, with consequent reduced braking capability, possibly resulting in damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0135, dated July 10, 2023 (EASA AD 2023–0135).

(h) Exceptions to EASA AD 2023–0135

(1) Where EASA AD 2023–0135 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2023–0135 requires a ''visual check,'' this AD requires replacing those words with ''visual inspection.''

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0135.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Saab AB, Support and Services' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: *shahram.daneshmandi@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0135, dated July 10, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0135, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this EASA AD on the EASA website *ad.easa.europa.eu*.

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

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

Issued on September 28, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22069 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1986; Project Identifier AD–2022–00015–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767 airplanes. This proposed AD was prompted by a report of cracks on the forward entry door and forward service door cutout aft lower corner fuselage skin and bear strap. This proposed AD would require repetitive inspections for cracking at the affected area, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 20, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1986; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1986.

FOR FURTHER INFORMATION CONTACT: Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *Joseph.J.Hodgin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No.

FAA–2023–1986; Project Identifier AD–2022–00015–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *Joseph.J.Hodgin@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports from operators of cracks found on the forward entry door and forward service door cutout aft lower corner fuselage skin and bear strap between stringer 19 and the lower main sill chord, from station (STA) 332 to STA 340. The cracks were reported between 25,983 and 47,385 total flight cycles, and between 45,771 and 80,680 total flight hours. These cracks have been occurring at earlier flight cycles and are spreading faster than initially predicted. One Model 767–300 operator reported a 5.3-inch crack on the forward service door, common to only the skin in the lower aft corner, and an associated 0.32-inch crack in the bear strap at the same location. The airplane had completed 43,459 total flight cycles and 61,086 total flight hours when the cracks were discovered. Undetected fatigue cracks, if not addressed, could result in a principal structural element's loss of limit load capability, adversely affecting the airplane's structural integrity.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 767–53A0301 RB, Revision 2, dated May 24, 2023. This service information specifies procedures for repetitive inspections (external detailed, internal detailed, and open hole high frequency eddy current) for cracking at the forward entry door and forward service door cutout aft lower corner fuselage skin and bear strap area. This service information also specifies procedures for on-condition actions, including crack repair. 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**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 682 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 8 work-hours × $85 per hour = $680 per inspection cycle.	$0	Up to $680 per inspection cycle.	Up to $463,760 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions (*i.e.,* possible crack repair) specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–1986; Project Identifier AD–2022–00015–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model 767–200, –300, –300F, and –400ER series airplanes, as identified in Boeing Alert Requirements Bulletin 767–53A0301 RB, Revision 2, dated May 24, 2023.

(2) Model 767–2C series airplanes, line numbers 1065, 1066, 1067, 1069, 1091, 1092, 1098, 1100, 1102, 1104, 1107, 1109, 1111, 1113, 1114, 1116, 1117, 1119, 1120, 1122, 1124, 1126, 1128, 1129, 1131, 1132, 1134, 1135, 1137, 1139, 1143, 1145, 1147, 1149, 1151, 1154, 1156, 1158, 1160, 1162, 1164, 1166, 1168, 1170, 1172, 1174, 1176, 1178, 1181, 1184, 1188, 1192, 1196, 1200, 1202, 1205, 1207, 1210, 1213, 1216, 1219, 1223, 1226, 1230, 1234, 1236, 1238, 1241, 1243, 1246, 1248, 1250, 1252, 1254, 1257, 1259, 1261, 1264, 1267, 1269, 1271, and 1273.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks found on the forward entry door and forward service door cutout aft lower corner fuselage skin and bear strap. The FAA is issuing this AD to address undetected fatigue cracks. The unsafe condition, if not addressed, could result in a principal structural element losing its limit load capability, adversely affecting the airplane's structural integrity.

(f) Compliance

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

(g) Required Actions: Model 767–200, –300, –300F, and –400ER

For Model 767–200, –300, –300F, –400ER series airplanes: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 767–53A0301 RB, Revision 2, dated May 24, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767–53A0301 RB, Revision 2, dated May 24, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767–53A0301, Revision 2, dated May 24, 2023, which is referred to in Boeing Alert Requirements Bulletin 767–53A0301, Revision 2, dated May 24, 2023.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 767–53A0301 RB, dated May 24, 2023, compliance time columns in Tables 1 and 2, paragraph E (Compliance), use the phrase ''the Original Issue date of Requirements Bulletin 767–53A0301 RB,'' this AD requires replacing those words with ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 767–53A0301 RB, Revision 2, dated May 24, 2023, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(i) Required Actions: Model 767–2C

At the later of the times specified in paragraphs (i)(1) and (2) of this AD: Perform inspections (external detailed, internal detailed, and open hole high frequency eddy current, as applicable) for cracking at the forward entry door and forward service door cutout aft lower corner fuselage skin and bear strap area, and repair any cracks found, in accordance with a method approved by the Manager, AIR–520, Continued Operational Safety Branch, FAA.

Note 1 to paragraph (i): Guidance on doing the required actions can be found in Boeing Alert Requirements Bulletin 767–53A0303 RB, Revision 1, dated June 29, 2023; and Boeing Alert Requirements Bulletin 767–53A0308 RB, Revision 1, dated June 21, 2023.

(1) Before 15,000 cumulative flight cycles or 30,000 cumulative total accumulated cycles, whichever occurs first. These terms are defined in paragraph (j) of this AD.

(2) Within 2,250 flight cycles, 4,500 total accumulated cycles, or 24 months after the effective date of this AD, whichever occurs first.

(j) Compliance Time Definitions

The definitions in paragraphs (j)(1) through (5) of this AD apply to this AD.

(1) A ''flight cycle'' is an operation by an aircraft that is initially stopped on the ground, departs in flight, attains a maximum above ground level (AGL) altitude greater than 5,000 feet relative to the runway, lands on a runway, and stops on the ground. A flight cycle may include one or more touch-and-go cycles.

(2) A ''touch-and-go cycle'' is an operation by an aircraft that lands and departs on a runway without stopping or exiting the runway and is immediately followed by a short flight with a maximum AGL altitude of 5,000 feet relative to the runway.

(3) ''Total accumulated cycles'' is the sum of the accumulated number of flight cycles, accumulated missed approaches, and the accumulated number of touch-and-go cycles.

(4) A ''missed approach'' (or go-around) is an aircraft landing approach that is discontinued and proceeded by a climb-out for any reason without landing gear touching the runway and is either immediately preceded by or immediately followed by a short flight with a maximum AGL altitude of 5,000 feet relative to the runway. Any flight operation not meeting this definition is considered a flight cycle.

(5) ''Cumulative'' cycles are total cycles since new.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 767–53A0301 RB, dated April 21, 2021, or Boeing Alert Requirements Bulletin 767–53A0301 RB, Revision 1, dated April 11, 2022.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *Joseph.J.Hodgin@faa.gov*.

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

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 767–53A0301 RB, Revision 2, dated May 24, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.

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

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

Issued on September 28, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22066 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1897; Project Identifier MCAI–2023–00921–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A320–214, A320–216, A320–251N, A320–271N, and A321–253NX airplanes. This proposed AD was prompted by a quality review of the forward cargo door frame-to-fuselage skin panel assembly identified several fastener holes that deviated from the manufacturing requirements. This proposed AD would require repetitive special detailed inspections of the affected area for discrepancies and, depending on findings, accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 20, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1897; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2023–1897.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1897; Project Identifier MCAI–2023–00921–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0153, dated July 26, 2023 (EASA AD 2023–0153) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A320–214, A320–216, A320–251N, A320–271N, and A321–253NX airplanes. The MCAI states a quality review of the forward cargo door frame-to-fuselage skin panel assembly identified several drillings as deviating from manufacturing requirements, creating oversized fastener holes, which could lead to cracking. This condition, if not addressed, could lead to reduced structural integrity of the fuselage.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1897.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0153 specifies procedures for repetitive special detailed inspections of the affected area for discrepancies and, depending on findings, accomplishment of applicable corrective action. The special detailed inspection consists of a rototest inspection for cracking of the forward cargo door frame to fuselage skin panel, and if no cracking is found, checking the fastener hole diameters. Corrective actions include installing oversized fasteners if the fastener hole diameter is less than or equal to the specified nominal diameter, contacting the manufacturer for repair instructions if the fastener hole diameter is greater than the specified nominal diameter, and repairing any cracking by contacting the manufacturer for repair instructions.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0153 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0153 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0153 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0153 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0153. Service information required by EASA AD 2023–0153 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1897 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 8 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
42.5 work-hours × $85 per hour = $3,613	$100	$3,713	$29,704

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Would not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–1897; Project Identifier MCAI–2023–00921–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A320–214, A320–216, A320–251N, A320–271N, and A321–253NX airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0153, dated July 26, 2023 (EASA AD 2023–0153).

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a quality review of the forward cargo door frame-to-fuselage skin panel assembly identified several drillings as deviating from manufacturing requirements, creating oversized fastener holes. The FAA is issuing this AD to address oversized fastener holes and cracking. The unsafe condition, if not detected and corrected, could result in reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0153.

(h) Exceptions to EASA AD 2023–0153

(1) Where EASA AD 2023–0153 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2023–0153 specifies ''If, during any SDI as required by paragraph (1) of this AD, any discrepancy is detected, as defined in the SB, before next flight, accomplish the applicable corrective action(s) in accordance with the instructions of the SB,'' this AD requires replacing those words with ''If, during any SDI as required by paragraph (1) of this AD, no cracking is found, before next flight, accomplish the applicable corrective actions in accordance with the instructions of the SB; and if, during any SDI as required by paragraph (1) of this AD, any cracking is found, before next flight, repair the cracking using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(3) Where paragraph (3) of EASA AD 2023–0153 specifies the repair be done in accordance with ''approved Airbus repair instructions,'' for this AD the repair must have been done using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0153.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0153 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (i) and (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0153, dated July 26, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0153, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website *ad.easa.europa.eu.*

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

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

Issued on September 28, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22070 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

Docket No. TTB–2022–0014; Notice No. 219A, Ref: Notice No. 219]

RIN 1513–AC84

Proposed Establishment of the Wanapum Village Viticultural Area; Proposed Name Change to Beverly, Washington

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is soliciting comments on a proposal to change the name of the proposed ''Wanapum Village'' American viticultural area (AVA) to ''Beverly, Washington.'' The proposed AVA area is located in Grant County, Washington and is entirely within the existing Columbia Valley AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before December 4, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal and view copies of this document, the original notice of proposed rulemaking, any supporting materials, and any comments TTB receives on this proposal within Docket No. TTB–2022–0014 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this supplemental proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Mimi Torello, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 432.

SUPPLEMENTARY INFORMATION: The original petition for the proposed Wanapum Village AVA was submitted by Kevin Pogue, a professor of geology at Whitman College. Dr. Pogue submitted the petition on behalf of Zirkle Fruit Company and local vineyard owners and winemakers. The proposed AVA covers approximately 2,415 acres and is located entirely within the existing Columbia Valley AVA in Grant County, Washington. Notice No. 219, which proposed the AVA, was published in the **Federal Register** on November 28, 2022 (87 FR 72927), and the original comment period closed on January 27, 2023. TTB received no comments in response to Notice No. 219. For a discussion of the distinguishing features and name evidence of the proposed AVA, see Notice No. 219.

Petition To Change the Proposed AVA Name

After the comment period closed, the petitioner requested that TTB change the name of the proposed AVA based on a request from members of the Wanapum tribe who expressed concerns about the use of their tribe's name for an AVA. To address those concerns, the petitioner amended his petition to instead request the AVA be named ''Beverly, Washington.'' No information regarding the proposed AVA other than information related to the name evidence has changed from the information published in Notice No. 219.

Beverly is the name of a small, unincorporated community that lies entirely within the proposed AVA. Name evidence provided in the petitioner's amended request includes a Wikipedia page describing the community of Beverly as established around 1905 by H.R. Williams and named after the city of Beverly, Massachusetts. The 2017 edition of the 1:24,000-scale topographic U.S.G.S. quadrangle map included with the original petition and used to draw the proposed AVA boundary is labeled ''Beverly Quadrangle'' and contains the community of Beverly. Further current name usage provided by the petitioner includes the name ''Beverly'' on local road signs along WA Hwy 243 and the intersection of Beverly-Burke Rd and WA Hwy 243. One of the vineyards located within the proposed AVA is named ''Beverly Vineyards,'' in addition to a local apartment complex named Beverly Apartments.

TTB Determination

After reviewing the petitioner's request to change the name of the proposed AVA and the supporting evidence, TTB believes that the request has merit. TTB is issuing this supplemental notice of proposed rulemaking specifically to seek comments on the new proposed name of ''Beverly, Washington.''

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, ''Beverly, Washington,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Beverly, Washington'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area's name, ''Beverly, Washington.'' The approval of the proposed Beverly, Washington AVA would not affect any existing AVA, and any bottlers using ''Columbia Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Beverly, Washington AVA would not be affected by the establishment of this new AVA. If approved, the establishment of the proposed Beverly, Washington AVA would allow vintners to use ''Beverly, Washington,'' ''Columbia Valley,'' or both AVA names as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed ''Beverly,

Washington'' AVA, which was originally proposed as the ''Wanapum Village'' AVA in Notice No. 219. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Beverly, Washington AVA on wine labels that include the term ''Beverly, Washington'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this document, Notice No. 219A, by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with Notice No. 219A within Docket No. TTB–2022–0014 on ''*Regulations.gov,*'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 219A on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* visit the site and click on the ''About'' link.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 219A and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov,* please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the TTB Administrator before the comment closing date to ask for a public hearing. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings Division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.____, as proposed in notice of proposed rulemaking Notice No. 219, which published in the **Federal Register** on November 28, 2022 (87 FR 72927), is amended by revising the section heading and paragraphs (a) and (c) introductory text to read as follows:

§ 9.____ Beverly, Washington.

(a) *Name.* The name of the viticultural area described in this section is ''Beverly, Washington''. For purposes of part 4 of this chapter, ''Beverly, Washington'' is a term of viticultural significance.

* * * * *

(c) *Boundary.* The Beverly, Washington viticultural area is located in Grant County, Washington. The boundary of the Beverly, Washington viticultural area is described as follows:

* * * * *

Signed: September 29, 2023.

Mary G. Ryan,

Administrator.

Approved: September 29, 2023.

Thomas C. West, Jr.

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2023–22213 Filed 10–4–23; 8:45 am]

BILLING CODE 4810–31–P

Notices

Federal Register
Vol. 88, No. 192
Thursday, October 5, 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.

UNITED STATES AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

DATES: The meeting date is Wednesday, November 8, 2023, 9 a.m. to 12 noon.

ADDRESSES: The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kerline Perry, (202) 233–8805.

Authority: Public Law 96–533 (22 U.S.C. 290h).

Dated: September 29, 2023.

Wendy Carver,

Business Manager.

[FR Doc. 2023–22154 Filed 10–4–23; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Emergency Review: Hawaii Agricultural Disaster Survey

AGENCY: National Agricultural Statistics Service, USDA

ACTION: 5-Day emergency information collection notice.

SUMMARY: The National Agricultural Statistics Service, Department of Agriculture (NASS) submitted a request to the Office of Management and Budget (OMB) for emergency clearance and review for the Hawaii Agricultural Disaster Survey. As required by the Paperwork Reduction Act of 1995, NASS is soliciting comments for this collection.

DATES: Comments on this proposal for emergency review should be received within October 10, 2023. We are requesting OMB to act within 5 calendar days from the close of this **Federal Register** Notice on the request for emergency review.

ADDRESSES:

- *Email: omboffi cer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

SUPPLEMENTARY INFORMATION: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. Starting on August 8, 2023, areas on the islands of Hawaii, Maui, and Molokai experienced damages from wildfires and high winds. Wildfires destroyed much of the city of Lahaina which was the location of agricultural sales and agritourism activities. Though some farms received physical damage from the wildfires and high winds, many others were impacted by the loss of markets and agritourism income. The Hawaii Department of Agriculture (HDOA) requested USDA–NASS to conduct a disaster survey to account for loss of crops/livestock, loss of commodity/product sales, damaged equipment, farm structures, other infrastructure, seeds, etc. This survey is to be conducted to ascertain the extent of economic losses (reduce revenue from sales of agricultural products and agritourism), damages on an acreage/livestock basis, (including livestock culling), agricultural infrastructure (buildings, equipment, irrigation, fencing, etc.), impact on agricultural workers. Response to the survey is voluntary.

General authority for these data collection activities is granted under U.S.C. Title 7, Section 2204.

This information collection request contains:

Agency: National Agricultural Statistics Service, Department of Agriculture.

Title: 2023 Hawaii Agricultural Disaster Survey, NASS.

OMB Number: 0535–NEW.

Frequency: One Time.

Affected Public: Farmers, ranchers, farm managers, farm contractors, and farm households.

Number of Respondents: 1,300.

Estimated Time per Respondent: 20 minutes.

Total Burden Hours: 450 hours.

Signed at Washington, DC, September 27, 2023.

Kevin L. Barnes,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 2023–22178 Filed 10–4–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Medicine Bow-Routt National Forests and Thunder Basin National Grassland are 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: Medicine Bow-Routt National Forests and Thunder Basin National Grassland, 2468 Jackson Street, Laramie, Wyoming 82070.

FOR FURTHER INFORMATION CONTACT: Kristi Murphy, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Recreation Program Manager, 307–745–2300 or *sm.fs.mbrrecfees@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 in local newspapers and other local publications for public comment. 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 $65 per night would be charged for the Esterbrook Group Campground. In addition, an expanded amenity recreation fee of $80 per night would be charged for rental of Blackhall Mountain Lookout, an expanded amenity recreation fee of $80 per night would be charged for rental of Hog Park Guard Station, an expanded amenity recreation fee of $80 per night would be charged for rental of Kennaday Peak Lookout, an expanded amenity recreation fee of $120 per night would be charged for rental of Summit Creek Guard Station, and an expanded amenity recreation fee of $150 per night would be charged for rental of Sandstone Crew Quarters. An expanded amenity recreation fee of $75 per group would be charged for the Brush Creek Pavilion group picnic site for groups of 50.

A standard amenity recreation fee of $5 per day per vehicle would be charged at Bush Creek, Dry Lake, Grizzly Creek, Libby Flats, Lincoln Gulch, Mad Creek, Miner's Cabin, Mirror Lake, Nautilus Rock, Pelton Creek, Rabbit Ears, Reynolds Hill, Six Mile, Slavonia, Tipple, West Lake Marie, and Woods Creek developed recreation sites. The Medicine Bow-Routt National Forest Day Use Pass and the America the Beautiful–the National Parks and Federal Recreational Lands Pass would be honored at these standard amenity recreation fee sites.

Recreation fee revenues collected at the new recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Reservations for the campgrounds, lookouts, and guard stations could be made online at *www.recreation.gov* or by calling 877–444–6777. Reservations would cost $8.00 per reservation.

Dated: September 29, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–22173 Filed 10–4–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–192–2023]

Foreign-Trade Zone 144; Application for Expansion of Subzone 144C; Orgill, Inc.; Tifton, Georgia

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Brunswick and Glynn County Development Authority, grantee of FTZ 144, requesting an expansion of Subzone 144C on behalf of Orgill, Inc., located in Tifton, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 28, 2023.

The applicant is requesting authority to expand the subzone to include an additional site: Proposed Site 2 (87 acres)—10 Orgill Way, Tifton, Georgia. No authorization for production activity has been requested at this time. The expanded subzone would be subject to the existing activation limit of FTZ 144.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 14, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 29, 2023.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: September 28, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–22129 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2023]

Foreign-Trade Zone (FTZ) 142; Partial Authorization of Production Activity; Nexsus Cocoa Services LLC; (Cocoa or Cocoa Equivalent and Sugar Blends); Southern New Jersey

On June 1, 2023, Nexsus Cocoa Services LLC submitted a notification of proposed production activity to the FTZ Board for its anticipated facility within FTZ 142, in Southern New Jersey.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 38019, June 12, 2023). On September 29, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time, with the exception of the foreign-status component ''refined white sugar,'' which was not authorized. The production activity described in the notification was authorized for the other requested finished products and foreign-status components, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14. If the applicant wishes to seek authorization for the foreign-status component ''refined white sugar'', it will need to submit an application for production authority, pursuant to section 400.23.

Dated: September 29, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–22130 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily

determines that certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) were sold in the United States at less than normal value (NV) during the period of review (POR), September 1, 2021, through August 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4948.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2016, Commerce published in the **Federal Register** the antidumping duty order on cold-rolled steel from Korea.[1] On September 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the period September 1, 2021, through August 31, 2022.[2] On November 3, 2022, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order*.[3] On January 20, 2023, Commerce selected Hyundai Steel Company (Hyundai) and POSCO/POSCO International Corporation (collectively, POSCO) as the mandatory respondents in this administrative review.[4] On May 11, 2023, we extended the deadline for issuing the preliminary results of this review to September 29, 2023, in accordance with section of 751(a)(3) of the Tariff Act of 1930 (the Act), and 19 CFR 351.213(h)(2).[5]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Scope of the Order

The merchandise subject to the *Order* is cold-rolled steel from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy less-than-fair-value (LTFV) investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we preliminarily calculated weighted-average dumping margins for Hyundai and POSCO that are not zero, *de minimis* (*i.e.,* less than 0.5 percent) or determined entirely based on facts available. Accordingly, consistent with guidance in section 735(c)(5)(A) of the Act, Commerce preliminarily calculated a weighted-average dumping margin for KG Dongbu Steel Co., Ltd. (Dongbu) using the calculated rates of the mandatory respondents, Hyundai and POSCO, which are not zero or *de minimis,* or determined entirely on the basis of facts available.

Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period of September 1, 2021, through August 31, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	1.30
POSCO/POSCO International Corporation	2.64
KG Dongbu Steel Co., Ltd	2.22

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results to interested parties within five days of the date of publication of this notice.[7] Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than seven days after the date for filing case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice. Hearing requests should contain the party's name, address, and telephone number, and a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing

[1] *See Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 87 FR 53719 (September 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022) (*Initiation Notice*).

[4] *See* Memorandum, ''Respondent Selection,'' dated January 20, 2023.

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2021–2022 Antidumping Duty Administrative Review,'' dated May 11, 2023.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Cold-Rolled Steel Flat Products from Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

is made, Commerce will inform parties of the time and date for the hearing.[10]

All briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Unless the deadline is extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[12] If the weighted-average dumping margin for an individually examined respondent is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[13] For any individually examined respondent whose weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Hyundai or POSCO for which the reviewed companies did not know that the merchandise they sold to the intermediary (*i.e.,* a reseller, trading company, or exporter) was destined for the United States.[15] In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[16]

For Dongbu, the company that was not selected for individual examination, we intend to assign an assessment rate based on the weighted average of the cash deposit rates calculated for Hyundai and POSCO, excluding any which are zero, *de minimis,* or determined entirely on the basis of facts available.[17]

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.[18] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication in the **Federal Register** of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.33 percent, the all-others rate established in the LTFV investigation.[19] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–22200 Filed 10–4–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022

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

[10] *See* 19 CFR 351.310(d).

[11] *See Temporary Rule.*

[12] *See* 19 CFR 351.212(b)(1).

[13] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[14] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[15] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Order.*

[17] *See* section 735(c)(5)(A) of the Act.

[18] *See* section 751(a)(2)(C) of the Act.

[19] *See Order.*

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) were sold in the United States at prices below normal value. The period of review (POR) is September 1, 2021, through August 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

These preliminary results are made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this administrative review on November 3, 2022.[1] Commerce selected Hyundai Steel Company (Hyundai Steel) and SeAH Steel Corporation (SeAH) as the two mandatory respondents in this review.[2] On May 4, 2023, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the preliminary results of review by 119 days, until September 29, 2023.[3]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order [5]

The product covered by the *Order* is OCTG from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(2) of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On November 8, 2022, HiSteel Co., Ltd. (HiSteel) submitted a letter certifying that it had no exports or sales of subject merchandise into the United States during the POR.[6] U.S. Customs and Border Protection (CBP) did not have any information to contradict this claim of no shipments during the POR.[7] Therefore, we preliminarily determine that HiSteel did not have any shipments of subject merchandise during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to HiSteel but will complete the review and issue instructions to CBP based on the final results.[8]

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

For these preliminary results, we calculated a dumping margin of 1.18 percent for SeAH and zero percent for Hyundai Steel, the mandatory respondents in this review. Consistent with our normal methodology, we have assigned to the companies not individually examined (*see* Appendix II for a full list of these companies) a margin of 1.18 percent, which is the margin calculated for SeAH.

Preliminary Results of Review

Commerce preliminarily finds that, for the period September 1, 2021, through August 31, 2022, the following weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Hyundai Steel Company	0.00
SeAH Steel Corporation	1.18
Non-examined companies [9]	1.18

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[10] Rebuttal briefs may be filed no later than seven days after case briefs are due and may

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022).

[2] *See* Memorandum, ''2021–2022 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea: Respondent Selection,'' dated December 8, 2022.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 4, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Order*).

[6] *See* HiSteel's Letter, ''No Shipments Letter,'' dated November 8, 2022.

[7] *See* Memorandum, ''Certain Oil Country Tubular Goods from the Republic of Korea 2021–22: No Shipment Inquiry for HiSteel Co., Ltd., During the Period 09/01/2021 through 08/31/2022,'' dated September 26, 2023.

[8] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[9] *See* Appendix II.

[10] *See* 19 CFR 351.309(c)(ii).

respond only to arguments raised in the case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[14] Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rate

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[15]

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* greater than or equal to 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer, and we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[16] Where the individually-selected respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.[17] If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for the companies listed in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 5.24 percent, the all-others rate established in the less-than-fair-value investigation.[18] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II

List of Companies Not Individually Examined

1. AJU Besteel Co., Ltd.
2. Dong-A Steel Co., Ltd.
3. Husteel Co., Ltd.
4. ILJIN Steel Corporation
5. K Steel Corporation
6. Keonwoo Metals Co., Ltd.
7. Kukje Steel
8. MSTEEL Co., Ltd.
9. NEXTEEL Co., Ltd.
10. Nissei Trading Co., Ltd.

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.212(b)(1).

[16] For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 884 (January 15, 2021).

[18] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination,* 81 FR 59603 (August 30, 2016).

11. POSCO International Corporation
12. Sungwon Steel Co., Ltd.
13. TGS Pipe

[FR Doc. 2023–22132 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The U.S. Department of Commerce (Commerce) has determined that a request for a new shipper review (NSR) of the antidumping duty order on stainless steel bars from India meets the statutory and regulatory requirements for initiation. The period of review (POR) for the NSR is February 1, 2023, through July 31, 2023.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Joshua Weiner, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3902.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the antidumping duty order on stainless steel bars from India on February 21, 1995.[1] On August 31, 2023, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), Commerce received a timely NSR request from Welspun Specialty Solutions Ltd. (Welspun).[2]

In its submission, Welspun certified that it is the producer and exporter of the subject merchandise subject to this request for an NSR.[3] Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Welspun certified that it did not export stainless steel bars to the United States during the period of investigation (POI).[4] Additionally, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Welspun certified that, since the initiation of the investigation, it has not been affiliated with any producer or exporter that exported stainless steel bars to the United States during the POI, including those not individually examined during the investigation.[5]

In its submission, pursuant to 19 CFR 351.214(b)(2)(iv), Welspun certified that it would provide necessary information related to the unaffiliated customer in the United States during the NSR. Welspun also provided a certification by its unaffiliated customer of its willingness to participate in the NSR.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(v), Welspun submitted documentation establishing the following: (1) the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment and any subsequent shipments, including whether such shipments were made in commercial quantities; and (3) the date of its first sale and any subsequent sales to an unaffiliated customer in the United States.[7]

As explained in the Initiation Checklist,[8] Commerce conducted a query of U.S. Customs and Border Protection (CBP) data which confirmed that subject merchandise entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties.[9] The CBP data examined by Commerce is consistent with information provided by Welspun in its NSR Request. In particular, the CBP data confirm the price and quantity reported by Welspun for the Type 3 sales that form the basis of its NSR Request.

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for an NSR initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this NSR is February 1, 2023, through July 31, 2023.

Initiation of NSR

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on the information on the record, we find that Welspun's NSR request meets the threshold requirements for initiation of an NSR of its shipments of stainless steel bars to the United States.[10] However, if the information supplied by Welspun is later found to be incorrect or insufficient during the course of this NSR, Commerce may rescind the review or apply adverse facts available, pursuant to section 776 of the Act, as appropriate. Pursuant to 19 CFR 351.221(c)(1)(i), Commerce will publish the notice of initiation of an NSR no later than the last day of the month following the anniversary or semiannual anniversary month of the *Order.* Commerce intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.[11]

We intend to conduct this NSR in accordance with section 751(a)(2)(B) of the Act.[12]

Because Welspun certified that it exported subject merchandise, the sale of which is the basis for its NSR request, Commerce will instruct CBP to suspend or continue to suspend liquidation of all entries of subject merchandise produced and exported by Welspun. To assist in its analysis of the *bona fide* nature of Welspun's sale(s), upon initiation of this NSR, Commerce will require Welspun to submit, on an ongoing basis, complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 29, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–22134 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan,* 60 FR 9661 (February 21, 1995) (*Order*).

[2] *See* Welspun's Letter, ''Request for New Shipper Review,'' dated August 31, 2023 (NSR Request).

[3] *See* NSR Request at Exhibit NSR–1.

[4] *Id.*

[5] *Id.*

[6] *Id.* at Exhibit NSR–2

[7] *See* NSR Request at Exhibits C and D; *see also* Welspun's Letter, ''Response to Supplemental Questionnaire,'' dated September 29, 2023.

[8] *See* Memorandum, ''New Shipper Initiation Checklist,'' dated concurrently with this notice (Initiation Checklist).

[9] *See* Memorandum, ''Placement of Welspun CBP Data Query Results on the Record'' dated concurrently with this notice (CBP Release Memo).

[10] *See, generally,* NSR Request.

[11] *See* section 751(a)(2)(B)(iii) of the Act.

[12] The Act was amended by the Trade Facilitation and Trade Enforcement Act of 2015, which removed from section 751(a)(2)(B) of the Act the provision directing Commerce to instruct CBP to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of an NSR. This was also codified in Commerce's regulations at 19 CFR 351.214(e).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) continues to determine that the 38 companies subject to this administrative review of the antidumping duty order on certain magnesia carbon bricks from the People's Republic of China (China) are part of the China-wide entity because they did not demonstrate eligibility for separate rates. The period of review (POR) is September 1, 2021, through August 31, 2022.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2023, Commerce published the preliminary results of this administrative review.[1] We invited parties to comment on the *Preliminary Results.* No parties submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results* and no decision memorandum accompanies this **Federal Register** notice. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The scope of the *Order* covers magnesia carbon bricks from China. For a complete description of the scope of the *Order, see* the *Preliminary Results.*

Final Results of Administrative Review

We received no comments on, and made no changes to, the *Preliminary Results.* We continue to find that the 38 companies subject to this review did not file either a no-shipment certification, a separate rate application, or a separate rate certification. Thus, Commerce continues to determine that these companies have not demonstrated their eligibility for separate rate status. In this administrative review, no party requested a review of the China-wide entity, and Commerce did not self-initiate a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity rate is not subject to change as a result of this review. The rate previously established for the China-wide entity is 236.00 percent.[3]

Assessment Rates

Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). For the 38 companies subject to this review, we will instruct CBP to apply the China-wide rate of 236.00 percent to all entries of subject merchandise during the POR. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, and which were not assigned the China-wide rate in this review, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed segment of this proceeding; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 236.00 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

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

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: September 27, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–22126 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 34825 (May 31, 2023) (*Preliminary Results*).

[2] *See Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders,* 75 FR 57257 (September 20, 2010) (*Order*).

[3] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–123]

Certain Corrosion Inhibitors From the People's Republic of China: Final Results and Partial Recission of Countervailing Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that

countervailable subsidies were provided to certain exporters/producers of certain corrosion inhibitors from the People's Republic of China (China) during the period of review (POR) July 13, 2020, through December 31, 2021. Commerce is also rescinding the review with respect to one company.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Ted Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on April 6, 2023, and invited interested parties to comment.[1] For a complete description of the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The products covered by the scope of the *Order* are corrosion inhibitors from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the evidence on the record, we revised the calculation of the net countervailable subsidy rates for Anhui Trust Chem Co., Ltd. (ATC) and Nantong Botao Chemical Co., Ltd. (Botao). For a discussion of the issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a complete description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available, pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. In the *Preliminary Results,* Commerce rescinded the review with respect to 29 companies. Included on that list of companies was Dandee Hong Kong Holdings Ltd., a company identified in Wincom, Inc.'s (the petitioner) letter withdrawing the review request.[5] However, that company name did not match the name of the company in the petitioner's request for review, Dandee Holdings Ltd. (Hk) and for which Commerce initiated a review.[6] Because Commerce initiated a review with respect to Dandee Holdings Ltd. (Hk) and the petitioner's withdrawal request was for Dandee Hong Kong Holdings Ltd., Commerce invited interested parties to submit comments regarding this issue and did not issue rescission instructions for either company name. In response, the petitioner clarified the appropriate name for the withdrawal of review request is for Dandee Holdings Ltd. (Hk). No other party requested review of Dandee Holdings Ltd. (Hk), and, therefore, we are rescinding this administrative review with respect to Dandee Holdings Ltd. (Hk), pursuant to 19 CFR 351.213(d)(1). For a discussion of the issue, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate the all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

There are three companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. In this review, the rates for ATC and Botao were above *de minimis* and not based entirely on facts available. Therefore, we are applying to the non-selected companies the average of the net subsidy rates calculated for ATC and Botao, which we calculated using the publicly-ranged sales data submitted by ATC and Botao.[7]

[1] *See Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2020–2021,* 88 FR 20475 (April 6, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Certain Corrosion Inhibitors from the People's Republic of China; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Corrosion Inhibitors from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 86 FR 14869 (March 19, 2021) (*Order*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated March 31, 2022.

[6] *See* Petitioner's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated July 6, 2022.

[7] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and*

Continued

This is the same methodology Commerce applied in the *Preliminary Results* for determining a rate for companies not selected for individual examination. However, due to changes in the calculation for ATC and Botao, we revised the non-selected rate accordingly. Consequently, for the three non-selected companies for which a review was requested and not rescinded, we are applying *ad valorem* subsidy rates of 66.08 percent for 2020 and 14.37 percent for 2021.

Final Results of Review

We determine the following net countervailable subsidy rates exist for the period January 1, 2021, through December 31, 2021:

Company	Subsidy rate—2020 (percent *ad valorem*)	Subsidy rate—2021 (percent *ad valorem*)
Anhui Trust Chem Co., Ltd.[8]	91.45	17.08
Nantong Botao Chemical Co., Ltd.[9]	52.20	10.74
Review-Specific Average Rate Applicable to the Following Companies[10]		
Gold Chemical Limited	66.08	14.37
Jiangyin Delian Chemical Co., Ltd.	66.08	14.37
Nantong Kanghua Chemical Co., Ltd.	66.08	14.37

Disclosure

Commerce intends to disclose calculations and analysis performed for the final results of review within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Requirements

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed for the corresponding time periods (*i.e.,* July 13, 2020, to December 31, 2020, and January 1, 2021, to December 31, 2021). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: September 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–22201 Filed 10–4–23; 8:45 am]

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Revocation of an Order in Part, 75 FR 53661, 53663 (September 1, 2010).

[8] Commerce finds the following companies to be cross-owned with ATC: Nanjing Trust Chem Co., Ltd.; and Jiangsu Trust Chem Co., Ltd.

[9] Commerce finds the following companies to be cross-owned with Botao: Rugao Connect Chemical Co., Ltd.; Rugao Jinling Chemical Co., Ltd.; and Nantong Yutu Group Co., Ltd.

[10] This rate is based on the rate for the respondent that was selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Preliminary Results of Antidumping Duty Administrative Review; and Preliminary Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR), September 1, 2021, through August 31, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt or Katherine Sliney, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851 or (202) 482–2437, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, Commerce published in the **Federal Register** the antidumping duty order on certain lined paper products from India.[1] On September 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On November 3, 2022, based on timely requests for review and in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order* with respect to ten companies: Cellpage Ventures Private Limited, Dinakar Process Private Limited (Dinakar), ITC Limited-Education and Stationery Products Business (ITC Limited),[3] JC Stationery (P) Ltd (JC Stationery), Lotus Global Private Limited, M/s. Bhaskar Paper Products (Bhaskar), Navneet Education Ltd (Navneet), Pioneer Stationery Private Limited, PP Bafna Ventures Private Limited, and SGM Paper Products.[4] On February 6, 2023, Commerce selected Dinakar and Navneet as mandatory respondents in this administrative review.[5] As noted in the Preliminary Decision Memorandum, Commerce has preliminarily determined that ITC Limited should replace Dinakar as a mandatory respondent because we preliminarily determine that ITC Limited was the price discriminator for the U.S. sales at issue during the POR.[6] Pursuant to section 751(a)(3)(A) of the Act, Commerce extended the deadline for the preliminary results until September 29, 2023.[7]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[8] A list of topics included in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by this *Order* is certain lined paper products. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[9]

Preliminary Determination of No Shipments

On December 5, 2022, Bhaskar, Dinakar, and JC Stationery submitted no-shipment certifications.[10] Information on the record regarding U.S. Custom and Border Protection (CBP) entry data showed that Dinakar had suspended entries into the United States.[11] Additionally, CBP reported information that contradicted Dinakar's no-shipment claim.[12] Following supplemental filings by Dinakar and ITC Limited and *ex-parte* meetings with counsel, Commerce asked ITC Limited to file a full questionnaire response in this review because of its involvement in the U.S. sales associated with Dinakar.[13] Commerce also requested that the customs entry forms that Dinakar and ITC Limited claim were filed incorrectly be revised.[14] At the time of these preliminary results, there is no evidence on the record that the relevant entries have been corrected. Accordingly, Commerce preliminarily determines that the record does not support a finding of no shipments for Dinakar.

To confirm the no-shipment claims by Bhaskar and JC Stationery, on December 9, 2022, Commerce issued no-shipment

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 53719 (September 1, 2022).

[3] Commerce initiated this review on ''ITC Limited-Education and Stationery Products Business'' (ITC–ESPB), but record evidence indicates that ITC–ESPB is not a company but is merely a department of ITC Limited. Accordingly, ITC Limited is the entity subject to this review, not ITC–ESPB.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022).

[5] *See* Memorandum, ''Respondent Selection,'' dated February 6, 2023 (Respondent Selection Memorandum).

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from India; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* Memorandum, ''Certain Lined Paper Products from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 5, 2023.

[8] *See* Preliminary Decision Memorandum.

[9] *Id.*

[10] *See* Dinakar's Letter, ''Certification of No Sales, Shipments, or Entries,'' dated December 5, 2022; *see also* JC Stationery's Letter, ''Certification of No Sales, Shipments, or Entries,'' dated December 5, 2022; and M/s. Bhaskar's Letter, ''Certification of No Sales, Shipments, or Entries,'' dated December 5, 2022.

[11] *See* Commerce's Letter to Dinakar, dated April 3, 2023; *see also* Respondent Selection Memorandum at Attachment.

[12] *See* Memorandum, ''Release of U.S. Customs and Border Protection Information Relating to December 22, 2022 Entry Document Request,'' dated January 17, 2023.

[13] *See* Dinakar's Letter, ''Response to Supplemental Questionnaire Regarding No Shipment Certification,'' dated December 16, 2022; *see also* Dinakar's Letter, ''Objection to Respondent Selection and Request for Reconsideration,'' dated February 10, 2023; Dinakar's Letter, ''Notification of Reporting Difficulties,'' dated February 24, 2023; Memorandum to the File, ''Meeting with Interested Parties,'' dated March 7, 2023; Dinakar's Letter, ''Dinakar Process Private Limited—Section A of Initial Questionnaire,'' dated March 16, 2023 (Dinakar AQR); Dinakar's Letter, ''Request for Response to Dinakar's Notification of Reporting Difficulties,'' dated March 30, 2023; Commerce's Letter to ITC Limited, ''Initial Questionnaire,'' dated April 3, 2023; and Commerce's Letter to Dinakar, dated April 3, 2023; ITC–ESPB's Letter, ''ITC Limited-Education and Stationery Products Business—Section A of Initial Questionnaire,'' dated May 1, 2023 (ITC–ESPB AQR); and ITC–ESPB's Letter, ''ITS Limited-Education and Stationery Products Business's Response to the First Supplemental Questionnaire,'' dated July 10, 2023.

[14] *See* Commerce's Letter to Dinakar, dated March 9, 2023.

inquiries to CBP.[15] CBP reported that it had no information to contradict the no-shipment claims of Bhaskar and JC Stationery during the POR.[16] Given that Bhaskar and JC Stationery reported that they made no shipments of subject merchandise to the United States during the POR, and there is no information calling these companies' claims into question, we preliminarily determine that Bhaskar and JC Stationery did not have any reviewable transactions during the POR. With respect to Bhaskar and JC Stationery, consistent with Commerce's practice, we will not rescind the review regarding these companies but, rather, will complete the review and issue instructions to CBP based on the final results of this review.[17]

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Export price was calculated in accordance with section 772 of the Act. NV was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this segment of the proceeding, because the rate calculated for Navneet is zero, we have preliminarily assigned a dumping margin to these companies based on the weighted-average dumping margin calculated for ITC Limited.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period September 1, 2021, through August 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
ITC Limited	23.16
Navneet Education Ltd	0.00
Cellpage Ventures Private Limited	23.16
Dinakar Process Private Limited	23.16
Lotus Global Private Limited	23.16
Pioneer Stationery Private Limited	23.16
PP Bafna Ventures Private Limited	23.16
SGM Paper Products	23.16

Disclosure and Public Comment

We intend to disclose the calculations used for these preliminary results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).[18] Commerce also intends to issue post-preliminary supplemental questionnaires subsequent to the publication of this notice. Thus, Commerce will announce the briefing schedule to interested parties at a later date. Interested parties may submit case briefs on the deadline that Commerce will announce. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[19] Parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[20] Executive summaries should be limited to five pages total, including footnotes. All briefs must be filed electronically using ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, within 30 days after the date of publication of this notice in the **Federal Register**.[21] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[22] If a request for a hearing is made, Commerce will announce the date and time of the hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled hearing date.

Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[23] An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the due date.

We intend to issue the final results of this administrative review, including the results of our analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for a mandatory respondent is not zero or *de minimis* (*i.e.,* greater than or equal to 0.5 percent) in the final results of this review, we will calculate an importer-specific *ad valorem* antidumping duty assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1).[24] If a mandatory respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by

[15] *See* Memorandum, ''No Shipment Inquiries,'' dated December 15, 2022.

[16] *See* Memorandum, ''CBP Response to No Shipment Inquiries,'' dated December 15, 2022.

[17] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014) (citing *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Automatic Assessment Clarification*)).

[18] *See* 19 CFR 351.224(b).

[19] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[20] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

[21] *See* 19 CFR 351.310(c).

[22] *See* 19 CFR 351.310(c).

[23] *See Temporary Rule,* 85 FR at 41363–41364.

[24] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

the total quantity associated with those transactions. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If the weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment *ad valorem* rate is zero or *de minimis,* we intend to instruct CBP to liquidate appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.[25]

For entries of subject merchandise during the POR produced by Navneet or ITC Limited for which they did not know their merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate (*i.e.,* 3.91 percent) [26] if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we intend to assign an antidumping duty assessment rate equal to the weighted-average dumping margin determined for the non-examined companies in the final results of review.

We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 3.91 percent, the rate established in the LTFV investigation of this proceeding.[27] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(2) and 19 CFR 351.221(b)(4).

Dated: September 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–22125 Filed 10–4–23; 8:45 am]

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[25] *See* section 751(a)(2)(C) of the Act.

[26] *See Order,* 71 FR 56952.

[27] *See Order,* 71 FR 56952.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–847]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that producers/exporters of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from Mexico subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR), September 1, 2021, through August 31, 2022. We invited interested parties to comment on these preliminary results.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: David Crespo or Nathan Araya, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693 or (202) 482–3401, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2016, Commerce published in the **Federal Register** the antidumping duty order on HWR pipes and tubes from Mexico.[1] On September 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On November 3, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* with respect to 12 companies.[3] On December 9, 2022, Commerce selected Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865, (September 13, 2016) (*Order).*

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 53719, (September 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022).

S.A. de C.V. (Prolamsa) for individual examination as mandatory respondents in this administrative review.[4]

On May 25, 2023, Commerce extended the preliminary results of this review until September 29, 2023.[5]

Scope of the Order

The products covered by the *Order* are HWR pipes and tubes from Mexico.[6] A full description of the scope of *Order* is contained in the Preliminary Decision Memorandum.[7]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}.'' In this administrative review, we preliminarily calculated weighted-average dumping margins for the mandatory respondents, Maquilacero and Prolamsa, that are not zero, *de minimis,* or based entirely on total facts available. Accordingly, Commerce is preliminarily assigning to the companies not individually examined, listed in the chart below, a margin of 4.33 percent which is the weighted-average of Maquilacero's and Prolamsa's calculated weighted-average dumping margins.[8]

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period September 1, 2021, through August 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Maquilacero S.A. de C.V	5.14
Productos Laminados de Monterrey S.A. de C.V	3.91
Review-Specific Average Rate Applicable to the Following Companies	
Aceros del Toro S.A. de C.V	4.33
Aceros El Fraile S.A. de C.V	4.33
Border Assembly S. de R.L. de C.V	4.33
Buffalo Tube S.A. de C.V	4.33
Fortacero S.A. de C.V	4.33
Grupo Collado S.A. de C.V	4.33
Perfiles y Herrajes L.M. S.A. de C.V	4.33
P.J. Trailers Company S.A. de C.V	4.33
Placa y Fierro de Monterrey S.A. de C.V	4.33
Regiomontana de Perfiles y Tubos S.A. de C.V	4.33

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.[9] Interested parties may submit case briefs or other written comments to Commerce no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.[11]

[4] *See* Memorandum, ''Respondent Selection for the 2021–2022 Antidumping Duty Administrative Review,'' dated December 9, 2022.

[5] *See* Memorandum, ''Extension of Deadline for the Final Results of Antidumping Duty Administrative Review,'' dated May 22, 2022; and ''Correction of Subject Line for Extension of Preliminary Results,'' dated May 25, 2023.

[6] For a complete description of the scope of the Order, *see* Preliminary Decision Memorandum.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2021–2022: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] For more information regarding the calculation of this margin, *see* Memorandum, ''Calculation of the Weighted-Average Dumping Margin for Non-Selected Companies for the Preliminary Results,'' dated concurrently with this notice. As the weighting factor, we relied on the publicly ranged sales data reported in the quantity and value charts submitted by Maquilacero and Prolamsa.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Interested parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Results of Review

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, no later than 120 days after the date of publication of these preliminary results in the **Federal Register**.[14]

Assessment Rates

Upon completion of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.

If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[15] If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If either of the respondents' weighted average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16]

For entries of subject merchandise during the POR produced by each individually examined respondent for which the producer did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate (4.91 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[17]

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rate established after the completion of the final results of this review.

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[18]

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.91 percent, the all-others rate established in the LTFV investigation.[19] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–22202 Filed 10–4–23; 8:45 am]

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[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[16] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[17] *See Order; see also Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *See* section 751(a)(2)(C) of the Act.

[19] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–834]

Paper File Folders From the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less-Than-Fair-Value Investigation

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that paper file folders from the Socialist Republic of Vietnam (Vietnam) are being, or likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is April 1, 2022, through September 30, 2022.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: William Horn or Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4868 or (202) 482–0339, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2023, Commerce published its preliminary affirmative determination in the LTFV investigation of paper file folders from Vietnam.[1] On June 20, 2023, Commerce published its *Amended Preliminary Determination* to correct a significant ministerial error.[2] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[3]

Scope of the Investigation

The products covered by this investigation are paper file folders from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, 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 did not receive comments from any interested parties on the Preliminary Scope Memorandum. We, therefore, did not make any changes to the scope of the investigation from the scope published in the *Preliminary Determination,* as noted in Appendix I.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in Appendix II to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Vietnam-Wide Entity and Use of Adverse Facts Available (AFA)

Consistent with the *Preliminary Determination,*[5] Commerce continues to find, pursuant to sections 776(a)(1) and (a)(2)(A)–(C) of the Tariff Act of 1930, as amended (the Act), that the use of facts available is warranted in determining the rate of the Vietnam-wide entity, which includes mandatory respondents CRE8 Direct (HK) Co., Limited and Fairton Asia Limited and six companies not selected for individual examination[6] that did not respond to our requests for information. Furthermore, we continue to find that an adverse inference is warranted in selecting from the facts otherwise available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a), because the Vietnam-wide entity, including the eight companies referred to above, failed to cooperate by not acting to the best of their ability to comply with Commerce's requests for information. For the final determination, consistent with the *Amended Preliminary Determination,*[7] as AFA, we are continuing to assign the Vietnam-wide entity, including the above-referenced companies, the rate of 233.93 percent, which is the highest margin alleged in the petition.[8]

Separate Rates

We preliminarily granted the mandatory respondent, Three-Color Stone Stationary (Viet Nam) Company, Limited (TCS), a separate rate in the *Preliminary Determination* based on its eligibility.[9] No party commented on our preliminary separate rate determination with respect to TCS and we have no basis otherwise to reconsider this determination. Accordingly, we continue to find that TCS is eligible for a separate rate in the final determination.[10]

No party commented on our preliminary determination to deny separate rates to the eight companies that failed to establish their eligibility for a separate rate by not complying with our requests for information, and there is no basis otherwise to reconsider this determination. Accordingly, we have continued to treat these companies as a part of the Vietnam-wide entity.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from interested parties, we made one change to the margin calculations for TCS.[11] For a discussion of this change, *see* the Issues and Decision Memorandum.

Combination Rates

Consistent with the *Preliminary Determination* and Policy Bulletin 05.1,[12] Commerce calculated combination rates for the sole respondent that is eligible for a separate rate in this investigation.

Final Determination

Commerce determines that the following weighted-average dumping margins exist for the period April 1, 2022, through September 30, 2022:

[1] *See Paper File Folders from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 31488 (May 17, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Paper File Folders from the Socialist Republic of Vietnam: Amended Preliminary Determination of Less Than Fair Value Investigation,* 88 FR 39825 (June 20, 2023) (*Amended Preliminary Determination*).

[3] *See* Memorandum, ''Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Paper File Folders from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated May 10, 2023 (Preliminary Scope Memorandum).

[5] *See Preliminary Determination* PDM at 13–17.

[6] *See* the ''Final Determination'' section of this notice, *infra,* at footnote 13 for the names of these six companies.

[7] *See Amended Preliminary Determination,* 88 FR at 39826.

[8] *See* Issues and Decision Memorandum at the ''Vietnam-Wide Rate'' section for a full discussion.

[9] *See Preliminary Determination* PDM at 12–13.

[10] *See* Issues and Decision Memorandum at the ''Separate Rates'' section for further discussion.

[11] *Id.*

[12] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005 (Policy Bulletin 05.1), available on Commerce's website at *https://enforcement.trade.gov/policy/bull05-1.pdf.*

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Three-Color Stone Stationary (Viet Nam) Company Limited ..	Three-Color Stone Stationary (Viet Nam) Company Limited	97.52
Vietnam-Wide Entity [13]		233.93

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination 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, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of paper file folders from Vietnam, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after May 17, 2023, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon the publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) the cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified in the table; (2) for all combinations of Vietnamese exporters/producers of subject merchandise that have not received their own separate rate above, the cash deposit rate will be the cash deposit rate established for the Vietnam-wide entity; and (3) for all non-Vietnamese exporters of subject merchandise which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Vietnamese exporter/producer combination that supplied that non-Vietnamese exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding where appropriate. Because there is no companion CVD proceeding, we have not made any such adjustments for this final determination.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our final affirmative determination of sales at LTFV. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding 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 of subject merchandise from Vietnam no later than 45 days after our 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. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order, in accordance with section 736(a) of the Act, 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 reminder to the parties subject to an 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

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

Dated: September 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products within the scope of the investigation are file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term ''primarily'' as used in the first sentence of this scope means 50 percent or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging.

Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth.

The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets.

Excluded from the scope are:

- mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- binders consisting of a front cover, back cover, and spine, with or without a flap; to be excluded, a mechanism with two or more metal rings must be included on or adjacent to the interior spine;
- non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (*e.g.,* boxes or cartons);

[13] The Vietnam-wide entity includes the following companies: Vietnam Cailan Industry Co., Ltd.; Changyuan Vietnam Co., Ltd.; Deli Vietnam Co., Ltd.; Fuda Stationery (Vietnam) Factory; Guangbo Vietnam Company, Ltd.; Teamade Stationery Vietnam Co., Ltd.; CRE8 Direct (HK) Co., Limited; and Fairton Asia Limited.

• expanding folders that have (1) 13 or more pockets, (2) a flap covering the top, (3) a latching mechanism made of plastic and/or metal to close the flap, and (4) an affixed plastic or metal carry handle;

• folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms, if any) that is covered entirely with fabric, leather, and/or faux leather;

• fashion folders, which are defined as folders with all of the following characteristics: (1) plastic lamination covering the entire exterior of the folder, (2) printing, foil stamping, embossing (*i.e.,* raised relief patterns that are recessed on the opposite side), and/or debossing (*i.e.,* recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder, (3) at least two visible and printed or foil stamped colors (other than the color of the base paper), each of which separately covers no less than 10 percent of the entire exterior surface area, and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;

• portfolios, which are folders having (1) a width of at least 16 inches when open flat, (2) no tabs or dividers, and (3) one or more pockets that are suitable for holding letter size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and

• report covers, which are folders having (1) no tabs, dividers, or pockets, and (2) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 4820.30.0040. Subject imports may also enter under other HTSUS classifications. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–22196 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–839]

Mattresses From Indonesia: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Natasia Harrison and Harrison Tanchuck, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1240 and (202) 482–7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 2023, the U.S. Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of mattresses from Indonesia.[1] Currently, the preliminary determination is due no later than October 23, 2023.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On September 22, 2023, the petitioners[2] submitted a timely request that Commerce postpone the preliminary CVD determination.[3] The petitioners stated that they request postponement so that the petitioners will have an adequate opportunity to submit rebuttal factual information and Commerce will have adequate time to review the data provided in the questionnaire responses and issue supplemental questionnaires prior to the issuance of the preliminary determination.[4] In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* December 26, 2023.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: September 27, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–22133 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Mattresses from Indonesia: Initiation of Countervailing Duty Investigation,* 88 FR 57412 (August 23, 2023).

[2] The petitioners are Brooklyn Bedding; Carpenter Co.; Corsicana Mattress Company; Future Foam Inc.; FXI, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding Inc.; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[3] *See* Petitioners' Letter, ''Request to Extend CVD Preliminary Determination,'' dated September 22, 2023.

[4] *Id.*

[5] Postponing the preliminary determination to 130 days after initiation would place the deadline on Monday, December 25, 2023. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Certain Folding Gift Boxes From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain folding gift boxes (gift boxes) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, 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) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2023, Commerce published the *Initiation Notice* of the sunset review of the order [1] in the **Federal Register** pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received a notice of intent to participate from Hallmark Cards, Inc. (Hallmark) within 15 days after the date of publication of the *Initiation Notice.*[3] Hallmark claimed interested party status under section 771(9)(C) of the Act as a producer of a domestic like product in the United States.[4] Commerce received an adequate substantive response to the *Initiation Notice* from Hallmark within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[5] We did not receive substantive responses from any other interested parties. On June 23, 2023, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from other interested parties.[6] As a result, in accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited, *i.e.,* 120-day sunset reviews of the *Orders.*

Scope of the Order

The products covered by the *Order* are certain folding gift boxes. Folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Imports of the subject merchandise are classified under Harmonized Tariff Schedules of the United States (HTSUS) subheadings 4819.20.0040 and 4819.50.4060. These subheadings also cover products that are outside the scope of the *Order.* Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive. For a full description of the scope, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the *Order* was revoked. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail would be up to a rate of 164.75 percent.

Administrative Protective Order

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

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: September 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–22128 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain tin mill products (tin mill products) from Japan would likely lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

[1] *See Notice of Antidumping Duty Order: Certain Folding Gift Boxes from the People's Republic of China,* 67 FR 864 (January 8, 2002) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 35832 (June 1, 2023) (*Initiation Notice*).

[3] *See* Hallmark's Letter, ''Notice of Intent to Participate,'' dated June 16, 2023.

[4] *Id.*

[5] *See* Hallmark's Letter, ''Hallmark's Substantive Response to Notice of Initiation,'' dated July 3, 2023.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2023,'' dated June 23, 2023.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order on Certain Folding Gift Boxes from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, Commerce published in the **Federal Register** the AD order on tin mill products from Japan.[1] On June 1, 2023, Commerce published the notice of initiation of the fourth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

On June 16, 2023, Commerce received notices of intent to participate in this review from Cleveland-Cliffs Inc. (Cleveland-Cliffs) and United States Steel Corporation (U.S. Steel) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Cleveland-Cliffs and U.S. Steel claimed interested party status under section 771(9)(C) of the Act, as producers of the domestic like product in the United States. On June 30 and July 3, 2023, we received adequate substantive responses from Cleveland-Cliffs and U.S. Steel, respectively, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from respondent interested parties. Therefore, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The merchandise covered by the *Order* is tin mill products. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is contained in the accompanying Issues and Decision Memorandum.[7] A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to the continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 95.29 percent.[8]

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to interested 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. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: September 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–22127 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Tin Mill Products from Japan: Notice of Antidumping Duty Order,* 65 FR 52067 (August 28, 2000) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 35832 (June 1, 2023).

[3] *See* Cleveland-Cliff's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated June 16, 2023; *see also* U.S. Steel's Letter, ''Notice of Intent to Participate,'' dated June 16, 2023.

[4] *See* Cleveland-Cliff's Letter, ''Domestic Industry Substantive Response,'' dated June 30, 2023; *see also* U.S. Steel's Letter, ''U.S. Steel's Substantive Response to Commerce's Notice of Initiation,'' dated July 3, 2023.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2023,'' dated July 25, 2023.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order on Certain Tin Mill Products from Japan,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See generally* Issues and Decision Memorandum.

[8] *Id.* at 9.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–911]

Paper File Folders From India: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of paper file folders from India. The period of investigation is January 1, 2021, through December 31, 2021.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 2023, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] Subsequently, on June 1, 2023, Commerce released its Post-Preliminary Analysis.[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

[1] *See Paper File Folders from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination,* 88 FR 16590 (March 20, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Post-Preliminary Analysis Memorandum;'' dated June 1, 2023 (Post-Preliminary Analysis).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Paper File Folders from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are paper file folders. For a full description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, 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 did not receive comments from any interested parties on the Preliminary Scope Memorandum. We, therefore, did not make any changes to the scope of the investigation from the scope published in the *Preliminary Determination,* as noted in Appendix I.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our final determination, including our determination with respect to Lotus Global Pvt. Ltd (Lotus Global) that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Determination and Post-Preliminary Analysis

Based on our review and analysis of the information received during verification and comments received from arties, for this final determination, we made certain changes to the countervailable subsidy rate calculations for Navneet Education Ltd. (Navneet), Lotus Global, and for all other producers/exporters. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Pursuant to section 705(c)(5)(A)(i) of the Act, Commerce will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and/or producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In this investigation, Commerce calculated a total subsidy rate for Lotus Global determined entirely under section 776 of the Act. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Navneet. Consequently, the rate calculated for Navneet is also assigned as the rate for all other producers and exporters.

Final Determination

Commerce determines that the following estimated net countervailable subsidy rates exist for the period January 1, 2021, through December 31, 2021:

Company	Subsidy rate (percent *ad valorem*)
Navneet Education Ltd	3.78
Lotus Global Pvt. Ltd	90.98
All Others	3.78

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no calculation changes from the *Preliminary Determination,* there are no calculations to disclose.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to collect cash deposits and suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after March 20, 2023, the date of publication of the *Preliminary Determination* in the **Federal Registe**r. In accordance with section 703(d) of the Act, on July 19, 2023, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered or withdrawn from warehouse, on or after July 18, 2023, but to continue the suspension of liquidation of all entries of subject merchandise on or after March 20, 2023 and on or before July 17, 2023.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of paper file folders from India. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of paper file folders from India. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business

[4] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated May 10, 2023 (Preliminary Scope Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: September 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of this investigation are file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term ''primarily'' as used in the first sentence of this scope means 50 percent or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging.

Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth.

The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets.

Excluded from the scope are:

- mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- binders consisting of a front cover, back cover, and spine, with or without a flap; to be excluded, a mechanism with two or more metal rings must be included on or adjacent to the interior spine;
- non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (*e.g.,* boxes or cartons);
- expanding folders that have (1) 13 or more pockets, (2) a flap covering the top, (3) a latching mechanism made of plastic and/or metal to close the flap, and (4) an affixed plastic or metal carry handle;
- folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms, if any) that is covered entirely with fabric, leather, and/or faux leather;
- fashion folders, which are defined as folders with all of the following characteristics: (1) plastic lamination covering the entire exterior of the folder, (2) printing, foil stamping, embossing (*i.e.,* raised relief patterns that are recessed on the opposite side), and/or debossing (*i.e.,* recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder, (3) at least two visible and printed or foil stamped colors (other than the color of the base paper), each of which separately covers no less than 10 percent of the entire exterior surface area, and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;
- portfolios, which are folders having (1) a width of at least 16 inches when open flat, (2) no tabs or dividers, and (3) one or more pockets that are suitable for holding letter size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and
- report covers, which are folders having (1) no tabs, dividers, or pockets, and (2) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 4820.30.0040. Subject imports may also enter under other HTSUS classifications. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–22197 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Partial Rescission, and Preliminary Intent To Rescind, in Part; 2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR) January 1, 2021, through December 31, 2021. In addition, we are rescinding the review with respect to 44 companies and notifying parties of our intent to rescind the review with respect to two companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2022, Commerce published a notice of initiation of administrative review of the countervailing duty (CVD) order on cold-rolled steel from Korea.[1] On January 20, 2023, Commerce selected Hyundai Steel Company (Hyundai Steel) [2] and POSCO/POSCO International Corporation (collectively,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022) (*Initiation Notice*).

[2] Hyundai Steel is also known as Hyundai Steel Co., Ltd.

POSCO)[3] as mandatory respondents in this administrative review.[4] On May 15, 2023, Commerce extended the time period for issuing the preliminary results of this review to September 29, 2023.[5]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the order is cold-rolled steel. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation. Commerce received timely withdrawal requests with respect to 44 companies.[7] Because there are no longer any pending review requests for those companies, we are rescinding this review with respect to them, in accordance with 19 CFR 351.213(d)(1). For a complete list of the companies for which we are rescinding this review, *see* Appendix II.

Preliminary Intent To Rescind Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[8] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[9] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[10]

According to the CBP data on the record, Hyundai Group and POSCO C&C Co., Ltd. did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we intend to rescind this review with respect to Hyundai Group and POSCO C&C Co., Ltd., in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[11] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual net countervailable subsidy rates for Hyundai Steel and POSCO/POSCO International Corporation. We preliminarily find that, during the POR, the net countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent *ad valorem*)
POSCO/POSCO International Corporation[12]	0.88
Hyundai Steel Company[13] ...	0.78

Disclosure

We intend to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the publication of these preliminary results, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary results in the **Federal Register**. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs after the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this review are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] All briefs must be

[3] POSCO International Corporation was formerly POSCO Daewoo Corporation. *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2019,* 86 FR 55572 (October 6, 2021) and accompanying Preliminary Decision Memorandum (PDM) at 10, unchanged *in Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2019,* 87 FR 2022 (April 8).

[4] *See* Memorandum, ''Selection of Respondents,'' dated January 20, 2023.

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2021 Countervailing Duty Administrative Review,'' dated May 15, 2023.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, Partial Rescission, and Intent to Rescind, in Part; 2021: Certain Cold-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* Petitioners' Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated February 1, 2023.

[8] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[9] *See* 19 CFR 351.212(b)(2).

[10] *See* 19 CFR 351.213(d)(3).

[11] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[12] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: POSCO Chemical, POSCO M-Tech, Pohang Scrap Recycling Distribution Center Co., Ltd., POSCO Nippon Steel RHF Joint Venture Co., Ltd., POSCO Terminal, and POSCO Steel Processing and Service. We note that POSCO has an affiliated trading company through which it exported certain subject merchandise during the POR, POSCO International (aka POSCO International Corporation). POSCO International was not selected as a mandatory respondent but was examined in the context of POSCO. Therefore, there is not an established CVD rate for POSCO International; POSCO International's subsidies are accounted for in POSCO's total subsidy rate. Instead, entries of subject merchandise exported by POSCO International will receive the rate of the producer listed on the U.S. Customs and Border Protection (CBP) entry form. Thus, the subsidy rate applied to POSCO and POSCO's cross-owned affiliates is also applied to POSCO International for entries of subject merchandise produced by POSCO.

[13] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Hyundai Steel: Hyundai ITC and Hyundai Green Power.

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[15] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety using ACCESS by 5 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for service documents containing business proprietary information, until further notice.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance using ACCESS within 30 days after the date of publication of this notice.[17] Requests should contain the party's name, address, and telephone number, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the time and date for the hearing.[18]

Final Results

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For the companies listed in Appendix II for which we are rescinding this administrative review, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2021, through December 31, 2021, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Rate

Pursuant to section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated in the final results for the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, except where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4) and 351.221(b)(4).

Dated: September 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Diversification of Korea's Economy
V. Subsidies Valuation Information
VI. Benchmarks and Interest Rates
VII. Analysis of Programs
VIII. Recommendation

Appendix II—Companies for Which Commerce is Rescinding the Review

1. AJU Steel Co., Ltd.
2. Amerisource Korea
3. Amerisource International
4. BC Trade
5. Busung Steel Co., Ltd.
6. Cenit Co., Ltd.
7. Daewoo Logistics Corp.
8. Dai Yang Metal Co., Ltd.
9. DK GNS Co., Ltd.
10. Dongbu Incheon Steel Co., Ltd.
11. Dongbu Steel Co., Ltd.
12. Dongbu USA
13. KG Dongbu Steel Co., Ltd.
14. Dong Jin Machinery
15. Dongkuk Industries Co., Ltd.
16. Dongkuk Steel Mill Co., Ltd.
17. Eunsan Shipping and Air Cargo Co., Ltd.
18. Euro Line Global Co., Ltd.
19. Golden State Corp.
20. GS Global Corp.
21. Hanawell Co., Ltd.
22. Hankum Co., Ltd.
23. Hyosung TNC Corp.
24. Hyuk San Profile Co., Ltd.
25. Iljin NTS Co., Ltd.
26. Iljin Steel Corp.
27. Jeen Pung Industrial Co., Ltd.
28. JS Steel Co. Ltd.
29. JT Solution
30. Kolon Global Corporation
31. Nauri Logistics Co., Ltd.
32. Okaya (Korea) Co., Ltd.
33. PL Special Steel Co., Ltd.
34. Samsung C&T Corp.
35. Samsung STS Co., Ltd.
36. SeAH Steel Corp.
37. SM Automotive Ltd.
38. SK Networks Co., Ltd.
39. Taihan Electric Wire Co., Ltd.
40. TGS Pipe Co., Ltd.
41. TI Automotive Ltd.
42. Topco Global Co., Ltd.
43. Xeno Energy
44. Young Steel Co., Ltd.

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[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–910]

Paper File Folders From India: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that paper file folders from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2021, through September 30, 2022.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Eric Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1988.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2023, Commerce published in the **Federal Register** its *Preliminary Determination* of the LTFV investigation of paper file folders from India, in which it also postponed the final determination until September 29,

2023.[1] Commerce invited interested parties to comment on the *Preliminary Determination*.[2] We received comments on the *Preliminary Determination* from Navneet Education Limited (Navneet) and the Coalition of Domestic Folder Manufacturers (the petitioner) on July 25, 2023.[3] On August 4, 2023, we received rebuttal briefs from the petitioner and Navneet.[4]

For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[5] 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 paper file folders from India. For a full description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, 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.[6] We did not receive comments from any interested parties on the Preliminary Scope Memorandum. We, therefore, 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 May 2023, we conducted verification of the sales and cost information submitted by Navneet for use in our final determination. Commerce conducted an on-site verification, including an examination of relevant sales and cost accounting records, and original source documents provided by Navneet.[7]

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 one change to the margin calculations for Navneet since the *Preliminary Determination. See* the Issues and Decision Memorandum for a discussion of this change.

Use of Adverse Facts Available

As discussed in the *Preliminary Determination,* Commerce assigned to certain mandatory respondents in this investigation, Kokuyo Riddhi Paper Products Pvt. Ltd (Kokuyo) and LGPL Paper Industries Pvt. Limited (LGPL), estimated weighted-average dumping margins on the basis of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act.[8] There is no new information on the record that would cause us to revisit our decision in the *Preliminary Determination.* Accordingly, for this final determination, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Kokuyo and LGPL.

Pursuant to section 776(b) of the Act, we examined the dumping margins alleged in the petition, the weighted-average dumping margin calculated in this final determination, and other information of the record of this investigation to determine an appropriate estimated weighted-average dumping margin for Kokuyo and LGPL based on AFA. Thus, we are assigning Kokuyo and LGPL the highest petition margin we are able to corroborate (*i.e.,* 86.01 percent) based on AFA.

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 Navneet that is not zero, *de minimis,* or determined entirely under section 776 of the Act. Consequently, the rate calculated for Navneet is also assigned as the rate for all other producers and exporters.

Final Determination

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

Producer/exporter	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent) [9]
Navneet Education Limited	17.22	13.44
Kokuyo Riddhi Paper Products Pvt. Ltd	86.01	82.23
LGPL Paper Industries Pvt. Limited	86.01	82.23

[1] *See Paper File Folders from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 31490 (May 17, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *Id.*

[3] *See* Navneet's Letter, ''Navneet's Administrative Case Brief,'' dated July 25, 2023; Petitioner's Letter, ''Petitioner's Case Brief,'' dated July 25, 2023.

[4] *See* Petitioner's Letter, ''Petitioner's Rebuttal Brief,'' dated August 4, 2023; Navneet's Letter, ''Navneet's Administrative Rebuttal Brief,'' dated August 4, 2023.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Paper File Folders from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated May 10, 2023 (Preliminary Scope Memorandum).

[7] *See* Memoranda, ''Verification of the Questionnaire Response of Navneet Education Limited in the Less-Than-Fair-Value Investigation of Paper File Folders from India,'' dated June 14, 2023; and ''Verification of the Cost Response of Navneet Education Limited in the Antidumping Duty Investigation of Paper File Folders from India,'' dated July 10, 2023.

[8] *See Preliminary Determination,* 88 FR at 31491.

[9] In the companion countervailing duty investigation, Commerce calculated a 3.78 percent export subsidy rate for Navneet. *See* unpublished **Federal Register** notice titled ''Paper File Folders from India: Final Affirmative Countervailing Duty Determination,'' dated concurrently with, and hereby adopted by, this notice.

Producer/exporter	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent) [9]
All Others	17.22	13.44

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days after the date of any public announcement or, if there is no public announcement, within five days after 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 paper file folders from India, as described in Appendix I to this notice, which were entered, or withdrawn from warehouse for consumption on or after May 17, 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), where appropriate, 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 respondents 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-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, we 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 paper file folder from India 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 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products within the scope of this investigation are file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term ''primarily'' as used in the first sentence of this scope means 50 percent or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging.

Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth.

The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets.

Excluded from the scope are:

- mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- binders consisting of a front cover, back cover, and spine, with or without a flap; to be excluded, a mechanism with two or more metal rings must be included on or adjacent to the interior spine;
- non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (*e.g.,* boxes or cartons);
- expanding folders that have (1) 13 or more pockets, (2) a flap covering the top, (3) a latching mechanism made of plastic and/or metal to close the flap, and (4) an affixed plastic or metal carry handle;
- folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms, if any) that is covered entirely with fabric, leather, and/or faux leather;
- fashion folders, which are defined as folders with all of the following characteristics: (1) plastic lamination covering the entire exterior of the folder, (2) printing, foil stamping, embossing (*i.e.,* raised relief patterns that are recessed on the opposite side), and/or 10 debossing (*i.e.,* recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder, (3) at least two visible and printed or foil stamped colors (other than the color of the base paper), each of which separately covers no less than 10 percent of the entire exterior surface area, and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;
- portfolios, which are folders having (1) a width of at least 16 inches when open flat, (2) no tabs or dividers, and (3) one or more pockets that are suitable for holding letter

size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and

• report covers, which are folders having (1) no tabs, dividers, or pockets, and (2) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 4820.30.0040. Subject imports may also enter under other HTSUS classifications. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–147]

Paper File Folders From the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that paper file folders from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less-than-fair value (LTFV). The period of investigation is April 1, 2022, through September 30, 2022.

DATES: Applicable October 5, 2023.

FOR FURTHER INFORMATION CONTACT: William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4868.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2023, Commerce published in the **Federal Register** the *Preliminary Determination* in this investigation.[1] On May 31, 2023, Commerce published the postponement of the final determination deadline until September 29, 2023.[2]

We received no comments or case briefs addressing any of the findings in the *Preliminary Determination;* therefore, there is no Decision Memorandum accompanying this notice.

Scope of the Investigation

The products covered by this investigation are paper file folders from China. For a complete description of the scope of this investigation, *see* the appendix to this notice.

Scope Comments

During the course of this investigation, 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.[3] We did not receive comments from any interested parties on the Preliminary Scope Memorandum. We, therefore, did not make any changes to the scope of the investigation from the scope published in the *Preliminary Determination,* as noted in the appendix.

China-Wide Entity and Use of Adverse Facts Available (AFA)

For the purposes of this final determination, consistent with the *Preliminary Determination,*[4] we relied solely on the application of AFA for the China-wide entity, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). Further, because no companies are eligible for a rate separate from the China-wide entity, we continue to find that all exporters of Chinese paper file folders are part of the China-wide entity. No interested party submitted comments on the *Preliminary Determination.* Thus, we made no changes to our analysis or to the China-wide entity's dumping margin for the final determination. A detailed discussion of our application of AFA is provided in the *Preliminary Determination.*[5]

Combination Rates

Because no Chinese exporters qualified for a separate rate, producer/exporter combination rates were not calculated for this final determination.

Final Determination

The final estimated weighted-average dumping margin is as follows:

Exporter/producer	Weighted-average dumping margin (percent)
China-Wide Entity	192.70

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce continues to find that all Chinese exporters of paper file folders are part of the China-wide entity and continues to rely solely on the application of AFA for the China-wide entity, there are no calculations to disclose for this final determination.

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 subject merchandise, as described in the appendix to this notice, entered, or withdrawn from warehouse, for consumption, on or after May 17, 2023, which is the date of publication of the affirmative *Preliminary Determination* in the **Federal Register**, at the cash deposit rate indicated above.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the amount by which the normal value exceeds the U.S. price as follows: (1) for all Chinese exporters of subject merchandise, the cash deposit rate will be equal to the estimated dumping margin established for the China-wide entity; and (2) for all third country exporters of subject merchandise, the cash deposit rate is also the cash deposit

[1] *See Paper File Folders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value,* 88 FR 31485 (May 17, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Paper File Folders from the People's Republic of China: Postponement of Final Determination in the Less-Than-Fair-Value Investigation,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated May 10, 2023 (Preliminary Scope Memorandum).

[4] *See Preliminary Determination* PDM at 7–11.

[5] *Id.*

rate applicable to the China-wide entity. 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, we will notify the U.S. International Trade Commission (ITC) of our final affirmative determination of sales at LTFV. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding 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 of paper file folders from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce intends to issue an antidumping duty order, in accordance with section 736(a) of the Act, directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise that are 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

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

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

Dated: September 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The products within the scope of this investigation are file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term ''primarily'' as used in the first sentence of this scope means 50 percent or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging.

Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth.

The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets.

Excluded from the scope are:

- mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- binders consisting of a front cover, back cover, and spine, with or without a flap; to be excluded, a mechanism with two or more metal rings must be included on or adjacent to the interior spine;
- non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (*e.g.,* boxes or cartons);
- expanding folders that have (1) 13 or more pockets, (2) a flap covering the top, (3) a latching mechanism made of plastic and/or metal to close the flap, and (4) an affixed plastic or metal carry handle;
- folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms, if any) that is covered entirely with fabric, leather, and/or faux leather;
- fashion folders, which are defined as folders with all of the following characteristics: (1) plastic lamination covering the entire exterior of the folder, (2) printing, foil stamping, embossing (*i.e.,* raised relief patterns that are recessed on the opposite side), and/or debossing (*i.e.,* recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder, (3) at least two visible and printed or foil stamped colors (other than the color of the base paper), each of which separately covers no less than 10 percent of the entire exterior surface area, and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;
- portfolios, which are folders having (1) a width of at least 16 inches when open flat, (2) no tabs or dividers, and (3) one or more pockets that are suitable for holding letter size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and
- report covers, which are folders having (1) no tabs, dividers, or pockets, and (2) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 4820.30.0040. Subject imports may also enter under other HTSUS classifications. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2023–22195 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board; Meeting

AGENCY: National Technical Information Service.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service (NTIS) Advisory Board (the Advisory Board).

DATES: The Advisory Board will meet on Wednesday, November 1, 2023, from 12:30 p.m. to approximately 4:30 p.m., Eastern Time.

ADDRESSES: The Advisory Board meeting will be via teleconference. Please note attendance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw, (703) 605–6136, *eshaw@ntis.gov* or Steven Holland at *sholland@ntis.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The Advisory Board reviews and makes recommendations to improve NTIS programs, operations, and general policies in support of NTIS' mission to

advance Federal data priorities, promote economic growth, and enable operational excellence by providing innovative data services to Federal agencies through joint venture partnerships with the private sector.

The meeting will focus on a review of the progress NTIS has made in implementing its data mission and strategic direction. A final agenda and summary of the proceedings will be posted on the NTIS website as soon as they are available. (*https://www.ntis.gov/about/advisorybd/index.xhtml*).

The teleconference will be via controlled access. Members of the public interested in attending via teleconference or speaking are requested to contact Mr. Holland at the contact information listed in the **FOR FURTHER INFORMATION CONTACT** section above not later than Friday, October 27, 2023. If there are sufficient expressions of interest, up to one-half hour will be reserved for public oral comments during the session. Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend are invited to submit written statements by emailing Mr. Holland at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–22146 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 25, 2023, from 10 a.m. until 4:30 p.m., Eastern Time, and Thursday, October 26, 2023, from 10 a.m. until 4 p.m., Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, October 25, 2023, from 10 a.m. until 4:30 p.m., Eastern Time, and Thursday, October 26, 2023, from 10 a.m. until 4 p.m., Eastern Time.

ADDRESSES: The meeting will be held at JW Marriott Washington, DC, the Senate Room (Lobby Level), 1331 Pennsylvania Ave. NW, Washington, DC 20004. Please note admittance instructions under the *Admittance Instructions* section of this notice.

FOR FURTHER INFORMATION CONTACT: Jeff Brewer, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, Telephone: (301) 975–2489, Email address: *jeffrey.brewer@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the ISPAB will meet Wednesday, October 25, 2023, from 10 a.m. until 4:30 p.m., Eastern Time, and Thursday, October 26, 2023, from 10 a.m. until 4 p.m., Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including through review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *https://csrc.nist.gov/projects/ispab.*

The agenda is expected to include the following items:

—Board Introductions and Member Activities,
—Update from NIST's Information Technology Laboratory (ITL) Acting Director,
—Briefing from NIST on Strategic Objective 4.3.1 from the National Cybersecurity Strategy Implementation Plan on Preparing for our Quantum Future,
—Briefing from ONCD on Strategic Objective 4.1.2 from the National Cybersecurity Strategy Implementation Plan and the Comments Received from the Open Source and Memory Safe Language Request for Information,
—Presentation from NIST and FCC on Strategic Objective 3.2.2 from the National, Cybersecurity Strategy Implementation Plan on U.S. Government IoT Security Labeling,
—A Briefing from OSTP and Discussion on Federal Agency Priorities for Privacy,
—Public comments,
—Board Discussions and Recommendations.

Note that agenda items may change without notice. The final agenda will be posted on the ISPAB event page: *https://csrc.nist.gov/Events/2023/ispab-october-meeting.* Seating will be available for the public and media.

Public Participation: Written questions or comments from the public are invited and may be submitted electronically by email to Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. on Tuesday, October 24, 2023.

The ISPAB agenda will include a period, not to exceed thirty minutes, for submitted questions or comments from the public between 3 p.m. and 3:30 p.m. on Wednesday, October 25, 2023. Submitted questions or comments from the public will be selected on a first-come, first-served basis and limited to five minutes per person.

Members of the public who wish to expand upon their submitted statements, those who had wished to submit a question or comment but could not be accommodated on the agenda, and those who were unable to attend the meeting are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory by email to: *jeffrey.brewer@nist.gov.*

Admittance Instructions: No registration is required for this in-person only event.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–22147 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD255]

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: During the June 2023 Pacific Fishery Management Council (Council) meeting, the Council made several recommendations to NMFS regarding

applications received in 2022 and 2023 for exempted fishing permits (EFPs). All EFP applicants request exemptions from regulatory provisions pertaining to the use of authorized gear types under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The applicants propose to test the effects and efficacy of using alternative fishing practices to harvest swordfish and other HMS off of the U.S. West Coast. The applications include requests to fish with a range of gear configurations including modified standard and linked daytime deep-set buoy gear (DSBG), night-set buoy gear, and extended linked buoy gear. The Council reviewed these applications and made recommendations to NMFS at their June and September meetings in 2022 and 2023. NMFS has determined that these applications warrant further consideration and is requesting public comment on them.

DATES: Comments must be submitted in writing by November 6, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0116, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0116 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Chris Fanning, NMFS West Coast Region, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2023–0116'' in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record, and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, West Coast Region, 562–980–4198, *Chris.Fanning@noaa.gov.*

SUPPLEMENTARY INFORMATION: On May 8, 2023, NMFS published a final rule implementing Amendment 6 to the HMS FMP (88 FR 29545). These regulations, which became effective on June 7, 2023, authorize standard and linked DSBG as an additional gear type for catching swordfish and other HMS in federal waters off of California and Oregon and include various gear specification requirements (*e.g.,* prohibiting vessels from deploying more than 10 pieces of standard or linked DSBG, in total, at one time), operational requirements (*e.g.,* prohibiting vessels from deploying their gear at night), and geographic area restrictions (*e.g.,* prohibiting fishing with DSBG in federal waters within the Southern California Bight without a limited entry permit). See 50 CFR 660.715.

At its September 2022 meeting, the Council deferred a recommendation on 4 applications [1] seeking increases in the number of pieces of DSBG simultaneously deployed from the current limit of 10 pieces, until a later date when more information would be available.[2] In June of 2023, the Council further recommended that NMFS not issue EFPs for testing simultaneous deployment of more than 10 pieces of standard or linked DSBG or night-set buoy gear (NSBG), including the four applications submitted to the Council in 2022 for this purpose,[1] and an application from Perez, Krebs, and Mintz considered at the June 2023 meeting,[3] until the authorized fishery has been operational for 2 seasons.[4]

Also in June 2023, the Council recommended that NMFS:

- Extend Mr. Nathan Perez's NSBG EFP for another 2 years.[5]
- Approve the 2022 PIER EFP application for Extended-Linked Buoy Gear (XLBG) with 100 percent observer coverage until NMFS determines enough data have been collected, with a minimum of 10 observed sets per vessel.[6]

Additionally, for consideration at the September 2023 Council Meeting, the Council requested Mr. Krebs clarify that his request is for his own EFP rather than a modification of another EFP.[7] Mr. Krebs confirmed that his request is for his own EFP, and the Council subsequently recommended that NMFS issue an EFP to Mr. Krebs to fish night-set buoy gear.

At this time, NMFS is requesting public comment on the DSBG EFP applications discussed above. NMFS will take the Council's comments into consideration along with public comments on whether to issue these EFPs. Aside from the regulatory exemptions being sought for the proposed activities in the applications described above, vessels fishing under an EFP would be subject to all other regulations implemented at 50 CFR part 660, subpart K and 50 CFR part 300, subpart C, including measures to protect sea turtles, marine mammals, and seabirds.

NMFS will consider all public comments submitted in response to this **Federal Register** notice prior to issuance of any EFP. Additionally, NMFS will analyze the effects of issuing EFPs in accordance with the National Environmental Policy Act and NOAA's Administrative Order 216–6A, as well as for compliance with other applicable laws, including Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which requires the agency to consider whether the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–22095 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–22–P

[1] *https://www.pcouncil.org/documents/2022/08/i-3-attachment-2-revised-efp-application-from-k-honings.pdf/.*

https://www.pcouncil.org/documents/2022/08/i-3-attachment-3-efp-application-from-k-jacobs-t-gomez.pdf/.

https://www.pcouncil.org/documents/2022/08/i-3-attachment-4-revised-efp-application-from-s-mintz.pdf/.

https://www.pcouncil.org/documents/2022/08/i-3-attachment-5-revised-efp-application-from-n-perez.pdf/.

[2] *https://www.pcouncil.org/september-2022-decision-summary-document/.*

[3] *https://www.pcouncil.org/documents/2023/06/j-3-attachment-1-efp-application-from-nathan-perez-donald-krebs-and-stephen-mintz.pdf/.*

[4] *https://www.pcouncil.org/june-2023-decision-summary-document/.*

[5] *https://www.pcouncil.org/documents/2023/06/j-3-attachment-3-request-from-nathan-perez-to-extend-his-current-nsbg-efp-and-include-donald-krebs.pdf/.*

[6] *https://www.pcouncil.org/documents/2022/08/i-3-attachment-6-efp-application-from-pier.pdf/.*

[7] *https://www.pcouncil.org/documents/2023/06/j-3-attachment-2-efp-application-from-donald-krebs.pdf/.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD241]

Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to City of Cordova Harbor Rebuild Project, Cordova, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two incidental harassment authorizations (IHAs) to the City of Cordova (Cordova) to incidentally harass marine mammals during construction activities associated with a with the City of Cordova, Cordova Harbor Rebuild project, in Cordova, Alaska.

DATES: These Authorizations are effective from October 1, 2023 through September 30, 2024 and October 1, 2024 through September 30, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States (U.S.) citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On February 16, 2023, NMFS received a request from the Cordova for two IHAs to take marine mammals incidental to pile driving and removal activities associated with the City of Cordova, Cordova Harbor Rebuild project, in Cordova, Alaska over the course of 2 years. Following NMFS' review of the application, The City of Cordova (Cordova) submitted a revised version on April 19, 2023. The application was deemed adequate and complete on May 12, 2023. Cordova's request for the first IHA is for take of 4 species of marine mammals by Level B harassment and, for a subset of these species, Level A harassment. For the second IHA, Cordova is requesting take of only Steller sea lion (*Eumetopias jubatus*) and harbor seal (*Phocoena phocoena*) by Level A and Level B harassment. Neither Cordova nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

There are no changes from the proposed IHAs to the final IHAs.

Description of Activity

Cordova plans to replace existing structures in the Cordova Harbor in Cordova, Alaska. Over the course of 2 years spanning September 2023–April 2024 and September 2024–April 2025, Cordova will use a variety of methods, including vibratory, impact, and down-the-hole (DTH) pile driving to remove existing piles and to install new ones.

Phase I will involve the removal of existing piles, the installation and removal of temporary piles, and the installation of permanent piles in the south harbor. During Phase I, 130 timber (12-inch (in) diameter; 0.3-meter (m) diameter) and 61 old steel (12-in (0.3-m) diameter) piles will be removed. Once the existing piles are removed, 155 16-in (0.4-m), 70 18-in (0.5-m), and 30 30-in (0.8-m) permanent steel piles will be installed. The installation and removal of 61 temporary 24-in (0.6-m) steel pipe piles will be completed to support permanent pile installation. Vibratory hammers, impact hammers, and DTH drilling will be used for the installation and removal of all piles. Piles will be removed by dead-pull or vibratory methods. The installation and removal of temporary piles will be conducted using vibratory hammers. All permanent piles will be initially installed with a vibratory hammer. After vibratory driving, if needed, piles will be impacted into the bedrock with an impact hammer. For some piles, a DTH drill will be needed to drive piles the final few inches of embedment.

Phase II will involve the removal of existing piles, the installation and removal of temporary piles, and the installation of permanent piles in the north and south harbor. During Phase II, 268 12-in (0.3-m) timber piles will be removed. Then, 24 24-in (0.6-m) steel piles, 80 steel H-piles, and 80 steel sheet piles will be installed. The installation and removal of 31 temporary 24-in (0.6-m) steel pipe piles will be completed to support permanent pile installation. As in Phase I, vibratory hammers, impact hammers, and DTH drilling will be used for the installation and removal of all piles. Piles will be removed by dead-pull or vibratory methods. The installation and removal of temporary piles will be conducted using vibratory hammers. All permanent piles would be initially installed with a vibratory hammer. After vibratory driving, if needed, piles will be impacted into the bedrock with an impact hammer. For some piles, a DTH drill will be needed to drive piles the final few inches of embedment.

A further detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHAs (88 FR 45149, July 14, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue two IHAs to Cordova was published in the **Federal Register** on July 14, 2023 (88 FR 45149). That notice described, in detail, Cordova's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, no public comments were received.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' Alaska Marine Mammal SARs. All values presented in Table 1 are the most recent available at the time of publication (including from the 2022 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Alaska Resident	-/-; N	1,920 (N/A, 1,920, 2019)	19	1.3
		Gulf of Alaska/Aleutian Islands/ Bering Sea Transient.	-/-; N	587 (N/A, 587, 2012)	5.9	0.8
		AT1 Transient	-/D; N	7 (N/A, 7, 2019)	0.1	0
Family Phocoenidae (porpoises):						
Dall's porpoise	*Phocoenoides dalli*	Alaska	-/-; N	UND (UND, UND, 2015) [5].	UND	37
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western DPS	E/D; Y	52,932 (N/A, 52,932, 2019).	318	254
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Prince William Sound	-/-; N	44,756 (N/A, 41,776, 2015).	1253	413

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies;* Committee on Taxonomy, 2022).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] Population estimate of 13,110 based on surveys from western Prince William Sound, as abundance estimates for the Alaska stock are more than 8 years old and are no longer considered reliable (Muto *et al.,* 2022). This population estimate will be used for small numbers calculations.

As indicated above, all four species (with six managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the planned project areas are included in Table 10 of the IHA application. While northern fur seal, Pacific white-sided dolphin, harbor porpoise, humpback whale, fin whale, minke whale, and gray whale have been documented in Prince William Sound, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. These species are all considered to be rare (no sightings in recent years) or very rare (no local knowledge of sightings within the project vicinity)

within Orca Bay according to the Prince William Sound Science Center in Cordova (Prince William Sound Science Center, 2022; Schinella, 2022). Given the shallow depths of the waters surrounding Cordova Harbor, it would also be unusual for many of these species to enter the project area. The take of these species has not been requested nor authorized and these species are not considered further in this document.

A detailed description of the species likely to be affected by Cordova's construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHAs (88 FR 45149, July 14, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to the NMFS website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, *Cephalorhynchid, Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on a ~65-dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Cordova's pile driving activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of the proposed IHAs (88 FR 45149, July 14, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Cordova's pile driving activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of the proposed IHAs (88 FR 45149, July 14, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through these IHAs, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment), or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for Dall's porpoise and harbor seals, due to the cryptic nature of these species in context of larger predicted auditory injury zones. Auditory injury is unlikely to occur for mid-frequency species and otariids, based on the likelihood of the species in the action area, the ability to monitor the entire smaller shutdown zone, and because of the expected ease of detection for the former groups. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we

describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals would be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that would be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 μPa (RMS) would be behaviorally harassed, and other pinnipeds would be harassed when exposed above 100 dB re 20 μPa (RMS). Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Cordova's planned activity includes the use of continuous (vibratory hammer and DTH drilling) and impulsive (DTH drilling and impact pile driving) sources, and therefore the 120- and 160-dB re 1 μPa (RMS) thresholds are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Cordova's planned activity includes the use of impulsive (impact pile driving and DTH drilling) and non-impulsive (vibratory hammer and DTH drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$*:* 219 dB; $L_{E,LF,24h}$*:* 183 dB	*Cell 2:* $L_{E,LF,24h}$*:* 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$*:* 230 dB; $L_{E,MF,24h}$*:* 185 dB	*Cell 4:* $L_{E,MF,24h}$*:* 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$*:* 202 dB; $L_{E,HF,24h}$*:* 155 dB	*Cell 6:* $L_{E,HF,24h}$*:* 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$*:* 218 dB; $L_{E,PW,24h}$*:* 185 dB	*Cell 8:* $L_{E,PW,24h}$*:* 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$*:* 232 dB; $L_{E,OW,24h}$*:* 203 dB	*Cell 10:* $L_{E,OW,24h}$*:* 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the planned project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (Table 4). This analysis uses the practical spreading loss model, a standard assumption regarding sound propagation for similar environments, to estimate transmission of sound through water. For this analysis, the transmission loss factor of 15 (4.5 dB per doubling of distance) is used. A weighting adjustment factor of 2.5 or 2, a standard default value for vibratory pile driving and removal or impact driving and DTH respectively, were used to calculate Level A harassment areas.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021).

TABLE 4—ESTIMATED UNDERWATER PROXY SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Pile type	Phase	Proxy source levels (dB) at 10 m			Reference
		Peak	RMS	SEL	
Vibratory Pile Driving					
12- to 24-in timber pile removal	I, II	.....	162	.....	Greenbusch *et al.,* 2018; CALTRANS, 2020.
12- to 24-in steel pile removal	I	.....	161	.....	NAVFAC (2013, 2015).
24-in steel template pile install/removal	I, II	.....		.....	
16-in steel pile	I	.....		.....	
18-in steel pile	I	.....		.....	
24-in steel pile	II	.....		.....	
30-in steel pile	I	.....	161.9	.....	Denes *et al.,* 2016.
Steel H-pile	II	.....	165	.....	CALTRANS, 2015.
Steel sheet pile	II	.....	162	.....	Buehler *et al.,* 2015.
Impact Pile Driving					
16-in steel pile	I	192.8	181.1	168.3	Denes *et al.,* 2016.
18-in steel pile	I	.....	.....	.....	
24-in steel pile	II	.....	.....	.....	
30-in steel pile	I	210	190	177	NMFS 2023 analysis*.
Steel H-pile	II	200	177	170	CALTRANS, 2015.
Steel sheet pile	II	205	190	180	CALTRANS, 2015.
DTH Drilling					
16-in steel pile	I	.....	167	159	Heyvaert and Reyff, 2021.
18- to 24-in steel pile	I, II	.....	.....	.....	
30-in steel pile	I	.....	174	164	Denes *et al.,* 2019); Reyff and Heyvaert, 2019; Reyff, 2020.
Steel H-pile	II	.....	.....	.....	

Note: SEL= sound exposure level; RMS= root mean square.

*NMFS used the mean of regionally relevant measurements to determine suitable proxy source values for these pile types. Projects included in the analysis were Navy (2012, 2013) and Miner (2020), following the methodology of Navy (2015).

TABLE 5—ESTIMATED IN-AIR PROXY SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Pile type	Phase	Proxy source levels (dB) at 15 m	Reference
		RMS	
Vibratory Pile Driving			
24-in steel template pile install/removal	I	103.2	Laughlin, 2010.
18-in steel pile		.....	
Steel H-pile		.....	

TABLE 5—ESTIMATED IN-AIR PROXY SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL—Continued

Pile type	Phase	Proxy source levels (dB) at 15 m	Reference
		RMS	
Impact Pile Driving			
18-in steel pile	I	101	Ghebreghzabiher *et al.,* 2017.
Steel H-pile		.....	
DTH Drilling [1]			
18-in steel pile	I	101	Ghebreghzabiher *et al.,* 2017.
Steel H-pile		.....	

Note: SEL= sound exposure level; RMS= root mean square.
[1] We conservatively assume that the proxy value for DTH driving is the same as for impact driving.

Level B Harassment Zones

Transmission loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$TL = B * \log_{10} (R_1/R_2)$,

Where:
TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement.

The recommended *TL* coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for Cordova's planned underwater activities. The Level B harassment zones and approximate amount of area ensonified for the planned underwater activities are shown in Table 6. The Level B harassment zones for the planned upland pile driving activities that may generate airborne noise are shown in Table 5.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same *TL* coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in Tables 1 and 2 in the **Federal Register** Notice of the proposed IHAs (88 FR 45149, July 14, 2023). The maximum RMS SPL, sound exposure level (SEL), and resulting isopleths are reported in Tables 4, 5, and 6.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING ACTIVITIES

Pile type	Phase	Distances to Level A and Level B thresholds (m)				Level B	Ensonified area [1] [2] for Level B (km^2)
		Level A					
		MF	HF	Phocid	Otariid		
Vibratory Pile Driving							
12- to 24-in timber pile removal.	I, II	1.8	30.5	12.5	0.9	6,309.6	125.
12- to 24-in steel pile removal.	I	1.6	26.1	10.7	0.8	5,411.7	92.
24-in steel template pile install/removal.	I, II	0.9	14.2	5.8	0.4		
16-in steel pile	I	1.1	18.6	7.6	0.5		
18-in steel pile	I	1.4	22.5	9.3	0.7		
24-in steel pile	II						
30-in steel pile	I	1.4	24.1	9.9	0.7	6,213.5	121.2.
Steel H-pile	II	1.1	18.7	7.7	0.5	10,000	314.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING ACTIVITIES—Continued

Pile type	Phase	Distances to Level A and Level B thresholds (m)				Level B	Ensonified area [1] [2] for Level B (km²)
		Level A					
		MF	HF	Phocid	Otariid		
Steel sheet pile	II	0.7	11.8	4.8	0.3	6,310	125.
In-air pile installation/removal.	I					68.6 (Phocid)/22.8 (Otariid).	0.01 (Phocid)/0.002 (Otariid).
Impact Pile Driving							
16-in steel pile	I	4.7	158.8	71.4	5.2	255	0.2.
18-in steel pile	I						
24-in steel pile	II						
30-in steel pile	I	23.6	791.3	355.5	25.9	1,000	3.14.
Steel H-pile	II	12.1	405.3	182.1	13.3	341.5	0.37.
Steel sheet pile	II	56.2	1881.2	845.2	61.5	1,000	3.14.
In-air pile installation/removal.	I					53.2 (Phocid)/16.8 (Otariid).	0.009 (Phocid)/ 0.0009 (Otariid).
DTH Drilling							
16-in steel pile	I	32.1	1075.7	483.3	35.2	13,593.6	580.2.
18- to 24-in steel pile.	I,II						
30-in steel pile	I	61.3	2,052.20	922	67.1	39,810.7	4976.6.
Steel H-pile	II						
In-air pile installation/removal.	I					53.2 (Phocid)/16.8 (Otariid).	0.009 (Phocid)/ 0.0009 (Otariid).

[1] Areas were calculated based on areas of a circle with the specified radius from Table 4 and 5 and realized ensonified areas will be smaller due to truncation by land masses.
[2] The ensonified area within Cordova Harbor will be no more than 0.19 kilometers² (km²).

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including presence, density, local knowledge, or other relevant information which will inform the take calculations.

Daily occurrence probability of each marine mammal species in the action area is based on consultation with local researchers and marine professionals. Occurrence probability estimates are based on conservative density approximations for each species and factor in historic data of occurrence, seasonality, and group size in Orca Bay, Orca Inlet, and/or Prince William Sound. A summary of planned take is shown in Table 7. To accurately describe species occurrence near the action area, marine mammals were described as either common (multiple sightings every month, could occur each day), frequent (multiple sightings every year, could occur each month), or infrequent (few sightings every year, could occur each month).

TABLE 7—ESTIMATED OCCURRENCE OF GROUP SIGHTINGS OF MARINE MAMMALS

Species	Frequency	Seasonality	Occurrence	Group size [a]
Steller sea lion:				
(within harbor)	Common	Year-round	1 group per day	[b] 4.1
(outside harbor)	Common	Year-round	2 groups per day	[b] 4.1
Harbor seal:				
(within harbor)	Frequent	Year-round	1 group per day	[c] 3.5
(outside harbor)	Common	Year-round	2 groups per day	[c] 3.5
Killer whale	Infrequent	Year-round	1 group per 10 days	[d] 14
Dall's porpoise	Infrequent	Year-round	1 group per 10 days	[e] 4.3

[a] Group size was averaged from seasonal data (Steller sea lions and harbor seals), pod size (killer whales), and observational data (Dall's porpoise) for more information see application.
[b] Leonard and Wisdom, 2020; Sigler *et al.,* 2017.
[c] ADF&G, 2022a.
[d] Muto *et al.,* 2022.
[e] Moran *et al.,* 2018.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and are authorized.

For total underwater take estimate, the daily occurrence probability for a species was multiplied by the estimated group size and by the number of days of each type of pile driving activity. Group size is based on the best available published research for these species and their presence in this area.

Estimated take = Group size × Groups per day × Days of pile driving activity

Take of pinnipeds by Level B harassment due to airborne noise was calculated based on the proportion of area within the harbor likely to be ensonified above the thresholds for harbor seals and other pinnipeds, respectively. The percent of the harbor ensonified was then multiplied by the number of days of pile driving, the group size, and groups per day, as done for underwater take estimates. The total numbers of takes by Level B harassment due to airborne noise authorized for harbor seal and Steller sea lion are seven and zero, respectively.

Take by Level A harassment is authorized for Steller sea lions and harbor seals given that these species are known to spend extended periods of time within Cordova Harbor and most Level A harassment isopleths are contained within Cordova Harbor. The take by Level A harassment calculations are based on lower daily occurrence estimates for each species than take by Level B harassment calculations based on input from marine professionals in the community about their presence in within the smaller ensonified zone of the harbor (Table 7; Greenwood 2022). Take by Level A harassment is also authorized for Dall's porpoise for impact driving of sheet piles and DTH drilling of 30 in and H-piles as it is not practicable to observe and shut down for porpoises throughout the entire Level A harassment zone (1,885 m for impact driving and 2,050 m for DTH drilling). Additionally, Level A harassment isopleths for most hearing groups and pile types were less than 10 m (Table 6) which is the minimum shutdown zone for this project (see Mitigation). Because the Level A harassment isopleths for those piles are within the minimum 10-m shutdown zone, no takes by Level A harassment are expected to occur from those activities, and therefore the predicted take by Level A harassment were removed from the total take calculations (Table 8).

During Phase II, killer whale and Dall's porpoise are not expected to occur within any harassment zones due to the relatively shallow water that will be ensonified (south of Spike Island into tidal mud flats) and therefore no take is authorized for these species.

TABLE 8—TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK TO BE TAKEN BY PHASE

Species	Stock/DPS	Authorized take			Stock size [1]	Percent of stock
		Level A	Level B	Total take		
Phase I						
Steller sea lion	Western DPS	107	788	895	52,932	1.69
Harbor seal	Prince William Sound	154	681	835	44,756	1.87
Killer whale [2]	Alaska Resident		83	83	1,920	4.35
	Gulf of Alaska/Aleutian Islands/ Bering Sea Transient.		26	26	587	4.35
Dall's porpoise	Alaska	10	32	42	13,110	0.32
Phase II						
Steller sea lion	Western DPS	98	730	828	52,932	1.56
Harbor seal	Prince William Sound	133	623	756	44,756	1.69

[1] Stock size comes from the most recent SARs except for Dall's porpoise whose stock estimate is based on surveys from western Prince William Sound only, as abundance estimates for the Alaska stock are more than 8 years old and no longer considered reliable (Muto *et al.,* 2022).
[2] AT1 transient stock take calculation resulted in 0.3 takes, therefore no takes were requested or are authorized.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation Measures

Cordova must follow mitigation measures as specified below:

- Ensure that construction supervisors and crews, the monitoring team, and relevant Cordova staff are trained prior to the start of all pile driving and DTH drilling activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the

application and the IHAs. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal at least one PSO must be used. The PSO will be stationed as close to the activity as possible;

- The placement of the PSOs during all pile driving and removal and DTH drilling activities will ensure that the entire shutdown zone is visible during pile installation;
- Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH drilling activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving or DTH drilling activity;
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 9 are clear of marine mammals. Pile driving and DTH drilling may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;
- Cordova must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer;
- If a marine mammal is observed entering or within the shutdown zones indicated in Table 9, pile driving and DTH drilling must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (Table 9) or 15 minutes have passed without re-detection of the animal; and
- As planned by the applicant, in water activities will take place only between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort Sea State of 4 or less. Pile driving and DTH drilling may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.

Shutdown Zones

Cordova will establish shutdown zones for all pile driving and DTH drilling activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will be based upon the Level A harassment isopleth for each pile size/type and driving method where applicable, as shown in Table 9.

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, work will stop and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions. A 10-m shutdown zone serves to protect marine mammals from physical interactions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 9 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, construction activities including in-water work will continue and the animal's presence within the estimated harassment zone will be documented.

Cordova will also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under these IHAs enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 15 minutes, and NMFS will be notified about species and precautions taken. Pile driving will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 15 minutes have passed since the last observation.

If shutdown and/or clearance procedures will result in an imminent safety concern, as determined by Cordova or its designated officials, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored.

TABLE 9—SHUTDOWN AND MONITORING ZONES

Pile type	Phase	Minimum shutdown zone (m)				Monitoring zone (m)
		MF	HF	Phocid	Otariid	
Barge movements, pile positioning, *etc.*	I, II	10	10	10	10	10.
Vibratory Pile Driving						
12- to 24-in timber pile removal	I, II	10	35	25	10	6,310.
12- to 24-in steel pile removal	I	10	35	20	10	5,425.
24-in steel template pile install/removal.	I, II	10	25	10	10	5,425.
16- to 24-in steel pile.						
30-in steel pile	I	10	25	10	10	6,225.
Steel H-pile	II	10	35	25	10	10,000.
Steel sheet pile	II	10	25	10	10	6,310.

TABLE 9—SHUTDOWN AND MONITORING ZONES—Continued

Pile type	Phase	Minimum shutdown zone (m)				Monitoring zone (m)
		MF	HF	Phocid	Otariid	
In-air pile install/removal	I	.....	.....	.....	.....	70 (phocids)/25 (otariids).
Impact Pile Driving						
16- to 24-in steel pile	I	10	185	75	10	255.
30-in steel pile	I	25	800	360	25	1,000.
Steel H-pile	II	25	410	185	25	350.
Steel sheet pile	II	75	1,000	500	75	1,000.
In-air pile install	I	.....	.....	.....	.....	55 (phocids)/20 (otariids).
DTH Drilling						
16- to 24-in pile	I, II	35	1,000	500	40	13,594.
30-in pile	I	75	1,000	500	75	39,811.
Steel H-pile	II	75	1,000	500	75	39,811.
In-air pile install	I	.....	.....	.....	.....	55 (phocids)/20 (otariids).

Protected Species Observers

The placement of PSOs during all construction activities (described in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs will monitor the full shutdown zones and the remaining Level A harassment and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving or DTH drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 9, pile driving activity will be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's planned measures NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise), (2) affected species (*e.g.,* life history, dive patterns), (3) co-occurrence of marine mammal species with the activity, or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals, or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and the IHAs. Marine mammal monitoring during pile driving activities will be conducted by PSOs meeting NMFS' following requirements:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods will be used;

• At least one PSO will have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

• Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;

• Cordova must employ up to five PSOs depending on the size of the monitoring and shutdown zones. A minimum of two PSOs (including the lead PSO) must be assigned to the active pile driving location to monitor the shutdown zones and as much of the Level B harassment zones as possible;

• Cordova must establish monitoring locations with the best views of monitoring zones as described in the IHAs and Application;

• Up to five monitors will be used at a time depending on the size of the monitoring area. PSOs will be deployed in strategic locations around the area of potential effects at all times during in-water pile driving and removal. PSOs will be positioned at locations that provide full views of the impact hammering monitoring zone and the Level A harassment Shutdown Zones. All PSOs will have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cells phones for maintaining contact with work crews;

• During work in the south harbor, up to three PSOs will be stationed at the following locations: along the south harbor parking area, on the Breakwater Trail, and at a viewpoint along New England Cannery Road; and

• During work in the north harbor, up to five PSOs will be stationed at the following locations: along the north harbor parking area, on the Breakwater Trail, at the viewpoint along the shore near Saddle Point, at a viewpoint along Whitshed Road, and on a vessel in Orca Inlet.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Cordova shall conduct briefings between construction supervisors and crews, PSOs, Cordova staff prior to the start of all pile driving activities and when new personnel join the work. These briefings will explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities for each IHA, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

(1) Dates and times (begin and end) of all marine mammal monitoring;

(2) Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact, vibratory, or DTH drilling) and the total equipment duration for vibratory removal for each pile or total number of strikes for each pile (impact driving);

(3) PSO locations during marine mammal monitoring;

(4) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance; and

(5) Upon observation of a marine mammal, the following information:

(a) Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting;

(b) Time of sighting;

(c) Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species;

(d) Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring at time of sighting);

(e) Estimated number of animals (min/max/best estimate);

(f) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*);

(g) Animal's closest point of approach and estimated time spent within the harassment zone;

(h) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(i) Number of marine mammals detected within the harassment zones and shutdown zones; by species; and

(j) Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports

will constitute the final reports. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, Cordova must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Also, because both the number and nature of the estimated takes anticipated to occur are identical in Phase I and Phase II, the analysis below applies to each of the IHAs.

Pile driving and DTH drilling activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species, Level A harassment from underwater sounds generated by pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality is expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for killer whales due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for the species, the rarity of the species near the action area, and the shallow depths of the harbor. The potential for harassment will be minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Take by Level A harassment is authorized for three species (Steller sea lion, harbor seal, and Dall's porpoise) as the Level A harassment isopleths exceed the size of the shutdown zones for specific construction scenarios. Additionally, the two pinniped species are common in and around the action area. Therefore, there is the possibility that an animal could enter a Level A harassment zone and remain within that zone for a duration long enough to incur PTS. Take by Level A harassment of these species is therefore authorized. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kilohertz (kHz)), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of authorized take by Level A harassment is very low for the marine mammal stocks and species. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

The Level A harassment zones identified in Table 6 are based upon an animal exposed to pile driving or DTH drilling of several piles per day (up to 25 piles per day for vibratory removal, 10 piles per day of vibratory installation, 6 piles per day of impact driving, and 4 piles per day of DTH drilling). Given the short duration to impact drive or vibratory install or extract, or use DTH drilling, each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement patterns in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since

the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and will therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. Take by Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removal, and DTH drilling in Cordova Harbor and the surrounding Orca Inlet are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal, and DTH drilling are temporary activities and effects will cease when equipment is not operating, any harassment occurring will be temporary. Additionally, many of the species present in region will only be present temporarily based on seasonal patterns or during transit between other habitats. These species will be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

The same regions are also a part of the western distinct population segment (DPS) Steller sea lion ESA critical habitat. While Steller sea lions are common in the project area, there are no essential physical and biological habitat features, such as haulouts or rookeries, within the planned project area. The nearest haulout and rookery are over 30 km away from the planned project area. Therefore, the planned project is not expected to have significant adverse effects on the critical habitat of Wester DPS Steller sea lions. No areas of specific biological importance (*e.g.,* ESA critical habitat, other BIAs, or other areas) for any other species are known to co-occur with the project area.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat will have any effect on each stock's ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Take by Level A harassment will be very small amounts and of low degree;
- Take by Level A harassment is authorized only for Steller sea lions, harbor seals, and Dall's porpoise;
- For all species, the Orca Inlet and the Cordova Harbor is a very small and peripheral part of their range;
- Anticipated takes by Level B harassment are relatively low for all stocks. Level B harassment will be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks, and will not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- Cordova will implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take, specific to each of the 2 consecutive years of planned activity, will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS plans to authorize, specific to each of the 2 consecutive years of planned activity, is below one-third of the estimated stock abundance for all species (in fact, take of individuals is less than 5 percent of the abundance of the affected stocks, see Table 8). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified.

The most recent estimate for the Alaska stock of Dall's porpoise was 13,110 animals; however this number accounts for only a portion of the stock's range. Therefore, the 42 authorized takes (including 10 Level A takes) of this stock are believed to be an even smaller portion of the overall stock abundance.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, for each of the 2 consecutive years of planned activity, NMFS finds that small numbers of marine mammals would be taken

relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The Alutiiq and Eyak people of Prince William Sound traditionally harvested marine mammals, however the last recorded subsistence harvest in Cordova was in 2014 as part of a regional effort to update the status of subsistence uses in Exxon Valdez Oil Spill communities, during which no marine mammals were harvested in Cordova (Fall and Zimpelman 2016).

In the decades since the Exxon Valdez Oil Spill, there have been declines in the number of households hunting and harvesting larger marine mammals in Prince William Sound. Surveys gathering subsistence data found that 10 percent or fewer households harvest or use harbor seals or sea lions (Poe *et al.,* 2010). Subsistence hunters in Prince William Sound report having to travel farther from their home communities to be successful when harvesting marine mammals (Keating *et al.,* 2020).

The planned project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region because:

- There is no recent recorded subsistence harvest of marine mammals in the area;
- Construction activities are localized and temporary;
- Mitigation measures will be implemented to minimize disturbance of marine mammals in the action area; and,
- The project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the planned mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Cordova's planned activities.

Endangered Species Act

There is one marine mammal species (western DPS Steller sea lion) with confirmed occurrence in the project area that is listed as endangered under the ESA. The NMFS Alaska Regional Office issued a Biological Opinion on September 28, 2023 under section 7 of the ESA on the issuance of two IHAs to Cordova under section 101(a)(5)(D) of the MMPA by the NMFS Office of Protected Resources. The Biological Opinion concluded that this action is not likely to jeopardize the continued existence of Western Distinct Population Segment (DPS) Steller sea lions. In addition, the proposed action is not likely to adversely affect Western North Pacific DPS humpback whales, Mexico DPS humpback whales, fin whales, or Steller sea lion critical habitat.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the issuance of two IHAs) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of these IHAs qualifies to be categorically excluded from further NEPA review.

Authorizations

NMFS has issued two consecutive IHAs to Cordova for the potential harassment of small numbers of marine mammal species incidental to the Cordova Harbor Rebuild project, in Cordova, Alaska, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: September 29, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–22096 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD446]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, November 13, 2023, at 9:30 a.m.

ADDRESSES: Webinar registration URL information: *https://attendee.gotowebinar.com/register/4122443360576842070.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Committee will meet to discuss recommendations from the Recreational Advisory Panel and Groundfish Advisory Panel. They will review draft Framework Adjustment 66 alternatives and draft impacts analysis and recommend preferred alternatives to the Council. They will receive an update on Framework Adjustment 68/Acceptable Biological Catches (ABC) Control Rules. They will also continue development of the Atlantic Cod Transition Plan as well as possibly recommend 2024 priorities to the Council. The Committee will discuss other business if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–22123 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD419]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the Area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS–A 0486, 0487, and 0500

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of Renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Orsted Wind Power North America LLC (Orsted) for the renewal of their 2022 incidental harassment authorization (IHA) (hereinafter, the 2022 IHA is referred to as the ''initial IHA'' and the 2023 IHA is referred to as the ''Renewal IHA'') to take marine mammals incidental to marine site characterization surveys, using high-resolution geophysical (HRG) equipment, in coastal waters from New York to Massachusetts, including the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS–A 0486, 0487, 0500 and along potential export cable routes (ECR).

DATES: This Renewal IHA is valid October 6, 2023 to October 5, 2024.

ADDRESSES: Electronic copies of the original application, Renewal IHA request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the initial IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Karolyn Lock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definitions of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in the MMPA and NMFS implementing regulations (*see* 16 U.S.C. 1362; 50 CFR 216.3; 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a 1-time 1-year renewal of an IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned, or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal of the initial IHA effective date (recognizing that the renewal's expiration date cannot extend beyond 1 year from expiration of the initial IHA);

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature

not previously analyzed or authorized; and

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

Summary of Request

On October 6, 2022, NMFS issued an IHA to Orsted to take small numbers of marine mammals incidental to marine site characterization surveys in Federal and state waters located in Lease Areas OCS–A 0486, 0487, 0500 off the coasts from New York to Massachusetts and along potential ECRs to landfall locations between Raritan Bay (part of the New York Bight) and Falmouth, Massachusetts. On May 26, 2023, NMFS received a request for a renewal of that initial IHA because Orsted's marine site characterization surveys under the initial IHA had not yet occurred and more time is required. As described in the application for the Renewal IHA, the activities for which incidental take is requested are identical to those covered by the initial IHA. However, Orsted decreased the number of survey days from 400 to 390 based on the assumption that subsidiaries of Orsted will have separate incidental take authorizations for marine site characterization surveys in Lease Areas OCS–A 0486 (Revolution Wind; 88 FR 8996, February 10, 2023) and OCS–A 0487 (Sunrise Wind; 87 FR 79072, January 19, 2023) during the effective period of the Renewal IHA. NMFS has authorize incidental take through this Renewal IHA assuming 400 survey days will be necessary as NMFS has not promulgated final rules for Revolution Wind and Sunrise Wind. The notice of the proposed Renewal IHA was published on September 11, 2023 (88 FR 62337).

As no work has commenced under the initial IHA, Orsted cannot provide a preliminary monitoring report. However, if work occurs before the effective date of the proposed Renewal IHA, a preliminary monitoring report would be required and be made available on NMFS' website (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*) and would detail any implemented mitigation and monitoring and show that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. Orsted has complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs in Lease Areas OCS–A 0486, 0487, and 0500 (84 FR 52464, October 2, 2019; 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022).

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this proposed Renewal IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS's part.

Description of the Specified Activities and Anticipated Impacts

Orsted plans to conduct marine site characterization surveys, specifically HRG surveys, in the Lease Areas OCS–A 0486, 0487, 0500 and ECR Area in Federal and state waters from New York to Massachusetts to support the characterization of the existing seabed and subsurface geological conditions, which is necessary for the development of an offshore electric transmission system. The project would use active acoustic sources, including some with potential to result in the incidental take of marine mammals by Level B harassment.

This Renewal IHA is identical to the initial IHA and conservatively assumes no work will occur for the remainder of the initial IHA.

The Renewal IHA would authorize incidental take, by Level B harassment only (in the form of behavioral disturbance), of 16 species or stocks of marine mammals for identical marine site characterization survey activities to be completed in 1 year, in the same area, using survey methods identical to those described in the initial IHA application. Therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. The amount of take, by Level B harassment, requested for the Renewal IHA is also identical to that authorized in the initial IHA. All mitigation, monitoring, and reporting measures would remain exactly as described in the **Federal Register** notice of the issued initial IHA (87 FR 61575, October 12, 2022).

Detailed Description of the Activity

A detailed description of the marine site characterization survey activities for which incidental take is authorized may be found in the **Federal Register** notice of the proposed IHA (87 FR 52515, August 26, 2022) for the initial authorization. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. This Renewal IHA is effective from October 6, 2023 through October 5, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (87 FR 52515, August 26, 2022). NMFS has reviewed the recently finalized 2022 Stock Assessment Reports (SARs), which included updates to stock abundances since the initial IHA was issued, information on relevant Unusual Mortality Events, and other scientific literature. In August 2023, NMFS released its final 2022 SARs, which updated the population estimate (N_{best}) of North Atlantic right whales from 368 to 338 and annual mortality and serious injury increased from 8.1 to 31.2. This large increase in annual serious injury/mortality is a result of NMFS including undetected annual mortality and serious injury in the total

annual serious injury/mortality, which had not been previously included in the SARs. The population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.,* 2023). NMFS has determined that neither this nor any other new information affects which species or stocks have the potential to be affected or any other pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization proposed (87 FR 52515, August 26, 2022). NMFS has reviewed information on relevant Unusual Mortality Events, the 2022 SARs, and other scientific literature and data, and preliminarily determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed (87 FR 52515, August 26, 2022) and issued (87 FR 61575, October 12, 2022) IHAs for the initial authorization. Specifically, the acoustic sources and levels, survey days, and marine mammal density applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take and type of take (*i.e.,* Level B harassment in the form of behavioral disturbance) remain unchanged from the initial IHA.

As was done in the initial IHA, Orsted requested a deviation from the calculated take for some species given to account for group size or observations during surveys in the surrounding area. Other than in the instances described below, Orsted's requested take matches their initial IHA. Orsted's Renewal IHA request references new data sources to inform group sizes for humpback whale (collected under the Northeast Projects IHA (87 FR 13975, March 11, 2022)), minke whale (Kenney and Vigness-Raposa, 2010); and Risso's dolphin (Barkaszi and Kelly, 2019). When these group size data were considered, the takes requested by Orsted for these species in their application were equal to or less than that authorized under the initial IHA. However, NMFS proposes to authorize the same number of incidental takes for all species as the initial IHA as the activities are identical and NMFS considers the data sources used in the initial IHA the best scientific information available.

During consideration of the Renewal IHA request, a typographical error in the proposed and notice of issuance **Federal Register** publications was identified that stated 17 pilot whales were authorized for take when 52 were requested and authorized within the IHA (as stated in the initial IHA application and issued IHA). The number of takes included in the Renewal IHA application and within this proposed Renewal IHA is 52, which equates to 0.13 percent of the population abundance. Lastly, the stock abundance amounts used for the initial IHA were from the 2021 SARs (Hayes *et al.,* 2022), the most recent available at the time of publication; the abundance amounts used for this proposed Renewal IHA are the final 2022 SARs (Hayes *et al.,* 2023).

TABLE 1—INITIAL IHA TAKE AUTHORIZED AND RENEWAL IHA PROPOSED TAKE BY LEVEL B HARASSMENT [1]

Species	Population abundance [2]	Take authorized initial IHA	Requested proposed take renewal IHA	NMFS proposed take renewal IHA [3]	Percent of population for renewal IHA
North Atlantic right whale [4]	338	17	16	17	5.03
Humpback whale	1,396	34	19	34	2.44
Fin whale	6,802	14	14	14	0.21
Sei whale	6,292	3	3	3	0.05
Minke whale	21,968	13	9	13	0.06
Sperm whale	4,349	2	2	2	0.05
Long-finned Pilot whale [5]	39,215	52	52	52	0.13
Bottlenose dolphin [6]	62,851	139	139	139	0.22
Common Dolphin	172,974	6,000	6,000	6,000	3.47
Atlantic white-sided dolphin	93,233	210	206	210	0.23
Atlantic spotted dolphin	39,921	29	29	29	0.07
Risso's dolphin	35,215	30	30	30	0.09
Striped dolphin	67,036	20	20	20	0.03
Harbor porpoise	95,543	287	279	287	0.30
Gray seal	27,300	118	116	118	0.43
Harbor seal	61,336	118	116	118	<0.01

[1] No take by Level A harassment is anticipated nor proposed to be authorized.

[2] Final 2022 SARs (Hayes et al., 2023). At the time of the issuance of the initial IHA, the 2021 SARs were used as the best available science. This table utilizes the 2022 SARs abundance numbers. The only species where the abundance number changed between the initial IHA and this proposed renewal was the North Atlantic right whale.

[3] While Orsted adjusted their requested take numbers for some species based on 10 less survey days or by utilizing a different data source, NMFS proposes to authorize the same amount of take as the initial IHA; as previously described.

[4] The SARs stock abundance number at the time of issuance for the initial IHA was 368. The percent of population affected under the initial IHA was 4.62 percent. While the total number of proposed takes remains the same between the initial IHA and this proposed renewal, due to the decrease in the population abundance to 338 (2022 SARs), the percent of the population affected would increase slightly to 5.03 percent.

[5] While the original **Federal Register** publications for the initial IHA contained a typo of 17 takes by Level B harassment instead of the 52 requested and eventually authorized, the percent abundance affected provided in those publications was correct (0.13 percent) as that value had been correctly calculated using 52. Therefore, as the population abundance remains unchanged from the initial IHA, the correction in this proposed renewal notice of 17 to 52 does not change the percent of the population proposed to be affected (0.13 percent).

[6] Western North Atlantic, Offshore stock.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (87 FR 61575, October 12, 2022), and the discussion of the least practicable adverse impact determination included in that document remains applicable and accurate. All mitigation, monitoring, and reporting measures in the initial IHA are identical in the Renewal IHA and summarized below.

- *Ramp-Up:* A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities;
- *Protected Species Observers:* A minimum of one NMFS-approved Protected Species Observer (PSO) must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations;
- *Pre-Operation Clearance Protocols:* Prior to initiating HRG survey activities, Orsted would implement a 30-minute pre-operation clearance period. If any marine mammals are detected within the Exclusion Zones prior to or during ramp-up, the HRG equipment would be shut down (as described below);
- *Shutdown Zones:* If an HRG source is active and a marine mammal is observed within or entering a relevant shutdown zone, an immediate shutdown of the HRG survey equipment would be required. Note this shutdown requirement would be waived for certain genera of small delphinids and pinnipeds;
- *Vessel Strike Avoidance Measures:* Separation distances for large whales (500 meter (m) North Atlantic right whales and other ESA-listed marine mammals; 100 m for all other non-ESA listed baleen whales; 50 m all other marine mammals); restricted vessel speeds and operational maneuvers; and
- *Reporting:* Orsted will submit a marine mammal report within 90 days following completion of the surveys.

Comments and Responses

A notice of NMFS' proposal to issue a Renewal IHA to Orsted was published in the **Federal Register** on September 11, 2023 (88 FR 62337). That notice either described or referenced descriptions of Orsted's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of the proposed IHA renewal and requested that interested persons submit relevant information, suggestions, and comments. That proposed notice was available for a 15-day public comment period.

NMFS received a total of 17 public comment letters from 13 private citizens and 4 non-governmental organizations. The comments and our responses are summarized below.

Most comments received expressed general opposition to issuance of the IHA or to the underlying associated activities. We reiterate here that NMFS' proposed action concerns only the authorization of marine mammal take incidental to the planned surveys—NMFS' authority under the MMPA does not extend to the surveys themselves or to wind energy development more generally. Many comments received requested that NMFS not issue any IHAs related to wind energy development and/or expressed opposition for wind energy development generally without providing information relevant to NMFS' decision. We do not specifically address comments expressing general opposition to activities related to wind energy development or respond to comments that are out of scope of the proposed Renewal IHA (88 FR 62337, September 11, 2023), such as comments on other Federal agency processes and activities not planned under this IHA.

All substantive comments and NMFS' responses are provided below, and all comment letters are available online at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llc-marine-site-0.*

Please review the comment letters for full details regarding the comments and associated rationale.

Comment 1: NMFS lacked adequate analysis of cumulative impacts (*i.e.,* effects) to marine mammals and should conduct an Environmental Impact Statement (EIS).

Response: Neither the MMPA nor NMFS' codified implementing regulations require consideration of other unrelated activities and their impacts on marine mammal populations. The preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density, distribution and status of the species, population size and growth rate, and other relevant stressors). The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There, NMFS stated that such effects are not considered in making findings under MMPA section 101(a)(5) concerning negligible impact. In this case, this Renewal IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations 50 CFR 216.104(a)(1) require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Orsted was the applicant for the Renewal IHA, and we are responding to the specified activity as described in that application and making the necessary findings on that basis.

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the Endangered Species Act (ESA) for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations (*e.g.,* the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; the 2017 Ocean Wind, LLC EA for site

characterization surveys off New Jersey; and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island). Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Orsted have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Orsted's IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 85 FR 21198, April 16, 2020; 86 FR 26465, May 10, 2021), which are similar to those planned by Orsted under this current Renewal IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this BiOp remains valid.

Comment 2: NMFS' proposed mitigation measures are beneficial but not reliable, ''practical'' but not effective. The mitigation measurements are not clearly defined and the monitoring measures are insufficient to ensure compliance with the IHA. Lastly, the IHA must include requirements to ensure the least practicable impact on marine mammal species or stocks and their habitats in and around the project site and include the use of effective reactive restrictions that are triggered by detection of protected species before or during site characterization activities.

Response: NMFS disagrees that the mitigation and associated monitoring measures are insufficient (*e.g.,* not reliable or effective) to affect the least practicable adverse impact on the affected species and stocks. NMFS notes that the commenters did not provide specific recommendations on the measures to address their concerns on effectiveness for NMFS to consider. In practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. All mitigation measures stated in the issued IHA, which are the same for the Renewal IHA, are considered practicable. NMFS works with each ITA applicant, including Orsted, to ensure that project-specific mitigation measures are practicable in real-world conditions. NMFS does not agree that additional wording is necessary within the IHA to further describe the measure requirements and implementation. If NMFS determines during the effective period of the IHA that the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat, NMFS may modify, suspend, or revoke the IHA.

As part of the analysis for all marine site characterization survey IHAs, including this Renewal IHA, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. There are several reactive mitigation measures, such as shutdown requirements, described in the **Federal Register** notice of the proposed initial IHA (87 FR 52515, August 26, 2022), and which are included in the final Renewal IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant exclusion zone while geophysical survey equipment is operational. In addition, clearance zones are required and a pre-start clearance period must be implemented prior to ramp-up of specified HRG equipment. During this period, clearance zones will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting. If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones.

NMFS reviews required reporting by authorization holders, which includes data from the independent PSOs and uses the information to evaluate the mitigation measure effectiveness and ensure compliance with the measures described in the issued IHA. Additionally, the mitigation measures included in the Renewal IHA are not unique, and data from prior IHAs support the effectiveness of these mitigation measures. NMFS finds the level of reporting currently required is sufficient for managing the Renewal IHA and monitoring the affected stocks of marine mammals.

Comment 3: NMFS uses complex formulas for estimated take and zone of influence (*i.e.,* ensonified area) which are flawed and inappropriately applied. The root mean square (RMS) 160 dB threshold is outdated.

Response: NMFS disagrees with the commenter and note the commenter did not provide additional scientific information for NMFS to consider. NMFS' estimated take analysis is based on the best scientific information available. As described in the notice of proposed initial IHA, the area of water ensonified $((\text{Distance/day} \times 2r) + \pi r^2)$ is a representation of the maximum extent of the ensonified area around a sound source over a 24-hr period. ''r'' is the linear distance from the source to the isopleth for the Level B harassment threshold. The distance to this threshold was calculated using a simple model of sound propagation loss at or above the rms 160 (decibel) dB threshold, which accounts for the loss of sound energy over increasing range. NMFS acknowledges that the 160-dB rms step-function approach is simplistic and that an approach reflecting a more complex probabilistic function may more effectively represent the known variation in responses at different levels due to differences in the receivers, the context of the exposure, and other factors. However, we recognize the potential for Level B harassment at exposures to received levels below 160 dB rms in addition to the potential that animals exposed to received levels above 160 dB rms will not respond in ways constituting behavioral harassment. Overall, there is a lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt

behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.,* 2007, 2019; Ellison *et al.,* 2012; Bain and Williams, 2006; Gomez *et al.,* 2016). Use of the 160-dB threshold allows for a simple quantitative estimate of take while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

NMFS has determined that spherical spreading is the most appropriate form of propagation loss for these surveys and has relied on this approach for past IHAs with similar equipment, locations, and depths. Please refer back to the Garden State HRG IHA (83 FR 14417, April 4, 2018) and the 2019 Skipjack HRG IHA (84 FR 51118, September 27, 2019) for examples. Prior to the issuance of these IHAs (approximately 2018 and older), NMFS typically relied upon practical spreading for these types of survey activities. However, as additional scientific evidence became available, including numerous sound source verification reports, NMFS determined that this approach was inappropriately conservative and, since that time, as consistently used spherical spreading. Furthermore, NMFS' User Spreadsheet tool assumes a ''safe distance'' methodology for mobile sources where propagation loss is spherical spreading (20LogR) (*https://media.fisheries.noaa.gov/2020-12/User_Manual%20_DEC_2020_508.pdf?null*), and NMFS' calculator tool for estimating isopleths to Level B harassment thresholds also incorporates the use of spherical spreading.

As described in the notice for the proposed initial IHA (87 FR 52515, August 26, 2022), NMFS estimate the amount of take through a simple formula (Estimated take = species density × ZOI × # of survey days). For the initial and Renewal IHAs, NMFS relied upon the best available scientific information in assessing the likelihood of occurrence for all potentially impacted marine mammal species, using Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016b, 2017, 2018, 2021) which represent the best available information regarding marine mammal densities in the survey area. Density data for all taxa are available for 10 km x 10 km grid cells over the entire survey area and, for most species (including North Atlantic right whale), are available for each of 12 months. NMFS believes that this approach to use the density information to estimate take is appropriate. Once the density per species in the project area were obtained, the ZOI and number of days of possible activity resulting in ensonified waters were multiplied. In some instances, the resulting estimated take is less than one group size and the take is increased to account for such (as described in the proposed initial and Renewal IHA notices). This creates a sound approach to calculate the number of species possibly affected by the proposed activities. A description on what numbers were used in the calculations for the Renewal IHA can be found in the proposed IHA in the **Federal Register** (88 FR 62337, September 11, 2023).

Comment 4: The planned activities could result in death or serious injury of marine mammals. Additionally, the increased boat traffic and sound from the acoustic sources for profiling the ocean floor could result in more than Level B harassment (*e.g.,* death or serious injury). The IHA must include a vessel traffic plan to minimize the effects of vessels on marine mammals.

Response: NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity. Additionally, NMFS cannot authorize mortality or serious injury via an IHA, and such taking is prohibited under the IHA. Moreover, the commenter did not provide additional scientific information for NMFS to consider.

NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals and determined that the surveys have the potential to impact marine mammals through behavioral effects and auditory masking. The best available science indicates that Level B harassment, or disruption of behavioral patterns, may occur as a result of Orsted's specified activities. No Level A harassment is expected to result, even in the absence of mitigation, given the characteristics of the sources planned for use. This is additionally supported by the required mitigation and very small estimated Level A harassment zones described in the initial IHA **Federal Register** notice (87 FR 61575, October 12, 2022) and carried through to the Renewal IHA (88 FR 62337, September 11, 2023). NMFS considers the potential for Level A harassment for any species to be discountable.

We also refer to the Greater Atlantic Regional Fisheries Office (GARFO) 2021 Programmatic Consultation, which finds that these survey activities are in general not likely to adversely affect ESA-listed marine mammal species (*i.e.,* GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all (as that term is defined under the ESA), much less be taken by serious injury or mortality). That document is found at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation.*

Orsted did not request authorization for take incidental to vessel strike during Orsted's marine site characterization survey. Nevertheless, NMFS analyzed the potential for vessel strikes to occur during the survey, and determined that the potential for vessel strike is so low as to be discountable. NMFS takes seriously the risk of vessel strike and has prescribed measures sufficient to avoid the potential for vessel strike to the extent practicable. NMFS has required these measures despite a very low likelihood of vessel strike; vessels associated with the survey activity will add a discountable amount of vessel traffic to the specific geographic region and, furthermore, vessels towing survey gear travel at very slow speeds (*i.e.,* roughly 4–5 knots). Condition 4(g) in the IHA contains a suite of non-discretionary requirements pertaining to vessel strike avoidance, including vessel operation protocols and monitoring. To date, NMFS is not aware of any site characterization vessel from surveys reporting a vessel strike within the United States.

Comment 5: NMFS should deny the proposed project and/or postpone any offshore wind (OSW) activities until NMFS determines effects of all OSW activities on marine mammals in the region and determines that the recent whale deaths are not related to OSW activities. Similarly, some commenters provided general concerns regarding recent whale stranding events on the Atlantic Coast, including speculation that the strandings may be related to wind energy development-related activities.

Response: NMFS authorizes take of marine mammals incidental to marine site characterization surveys but does not authorize the surveys themselves. Therefore, while NMFS has the

authority to modify, suspend, or revoke an IHA if the IHA holder fails to abide by the conditions prescribed therein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines that (1) the authorized taking is having or is likely to have more than a negligible impact on the species or stocks of affected marine mammals, or (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat, it is not within NMFS' jurisdiction to impose a moratorium on offshore wind development or to require surveys to cease on the basis of unsupported speculation. The MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested incidental take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future.

NMFS reiterates that there is no evidence that noise resulting from offshore wind development-related site characterization surveys could potentially cause marine mammal stranding, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. The commenters offer no such evidence. NMFS will continue to gather data to help us determine the cause of death for these stranded whales. We note the Marine Mammal Commission's recent statement: ''There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively-associated with baleen whale strandings.'' (Marine Mammal Commission Newsletter, Spring 2023).

There is an ongoing Unusual Mortality Event (UME) for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016. Partial or full necropsy examinations were conducted on approximately half of the whales. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (*e.g.,* national and state parks) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction, either vessel strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass) or had other causes of death including parasite-caused organ damage and starvation.

As discussed herein, HRG sources may behaviorally disturb marine mammals (*e.g.,* avoidance of the immediate area). These HRG surveys are very different from seismic airguns used in oil and gas surveys or tactical military sonar. They produce much smaller impact zones because, in general, they have lower source levels and produce output at higher frequencies. The area within which HRG sources might behaviorally disturb a marine mammal is orders of magnitude smaller than the impact areas for seismic airguns or military sonar. Any marine mammal exposure would be at significantly lower levels and shorter duration, which is associated with less severe impacts to marine mammals.

Comment 6: The number of takes NMFS proposed to authorize for North Atlantic right whale is too high, the data used to determine the level of take was not based on the best available science and should have included Level A harassment. In addition, NMFS should delay or deny issuing the Renewal IHA until the results from new North Atlantic right whale research is published and fully analyzed.

Response: NMFS disagrees that the number of takes by Level B harassment is high and emphasizes its determination that the authorized takes of North Atlantic right whales represents small numbers of marine mammals relative to the affected stock abundances (*i.e.,* 5.03 percent; NMFS considers that one-third of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to ''small numbers''). NMFS refers to our response on estimating take in Comment 3, which referenced the process that resulted in the 5.03 percent takes by Level B harassment of North Atlantic right whale. NMFS reiterates that there is no credible scientific evidence available suggesting that Level A harassment, mortality, and/or serious injury is a potential outcome of the planned survey activity, as further discussed in our response to Comment 4.

The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. We referenced the best available data for our effects analysis (*i.e.,* impact assessment) available at the time of publication. NMFS relied upon the best scientific evidence available, including, but not limited to, the 2022 SAR (Hayes *et al.,* 2023), scientific literature, and Duke University's density model (Roberts *et al.,* 2022), in analyzing the impacts of this project's specified activities on marine mammals. The commenter did not provide additional scientific information for NMFS to consider. NMFS reiterates our response on the use of best available science in Comment 4.

NMFS disagrees that a delay or denial of the Renewal IHA is necessary until new scientific information is available. The MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested incidental take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future. If new information, which NMFS considers to be the best available scientific information, demonstrates that the authorized activity is having a non-negligible impact on a marine mammal stock, NMFS must modify, suspend, or revoke the IHA.

Comment 7: NMFS must reissue the Renewal IHA notice and provide a full 30-day comment period to ensure adequate public engagement. The 15-day public comment period for IHA renewals is a violation of the MMPA, which requires a 30-day public comment period for all IHAs, including reauthorizations. NMFS falsely asserts that if it includes an opportunity to comment on a renewal at the time of the proposed IHA, the original comment period will count towards the 30-day requirement. The text of the MMPA, however, does not explicitly or implicitly recognize an expedited renewal process with a 15-day comment period for IHAs even if NMFS determines the activities are nearly identical.

Response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464, October 2, 2019 and 85 FR 53342, August 28, 2020), NMFS explained the IHA renewal process is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA and further,

promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, NMFS disagrees with this comment.

All IHAs issued, whether an initial IHA or a renewal, are valid for a period of not more than 1 year. The public has 30 days to comment on proposed IHAs, with a cumulative total of 45 days for IHA renewals. The notice of the proposed IHA published in the **Federal Register** (87 FR 52515, August 26, 2022) provided a 30-day public comment period and made clear that NMFS was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey. As detailed in the **Federal Register** notice for the proposed IHA and on the agency's website, eligibility for renewal is determined on a case-by-case basis, renewals are subject to an additional 15-day public comment period, and the renewal is limited to up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of the proposed IHA notice or the activities described in the Description of Proposed Activities section of the proposed IHA notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice. NMFS' analysis of the anticipated impacts on marine mammals caused by the applicant's activities covers both the initial IHA period and the possibility of a 1-year renewal. Therefore, a member of the public considering commenting on a proposed initial IHA also knows exactly what activities (or subset of activities) would be included in a proposed renewal IHA, the potential impacts of those activities, the maximum amount and type of take that could be caused by those activities, the mitigation and monitoring measures that would be required, and the basis for the agency's negligible impact determinations, least practicable adverse impact findings, small numbers findings, and (if applicable) the no unmitigable adverse impact on subsistence use finding—all the information needed to provide complete and meaningful comments on a possible renewal at the time of considering the proposed initial IHA. Reviewers have the information needed to meaningfully comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, if work had commenced, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period, which includes NMFS' direct notice to anyone who commented on the proposed initial IHA, provides the public an opportunity to review these few documents, provide any additional pertinent information, and comment on whether they think the criteria for a renewal have been met. Combined together, the 30-day public comment period on the initial IHA and the additional 15-day public comment period on the renewal of the same or nearly identical activities, provides the public with a total of 45 days to comment on the potential for renewal of the IHA.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D) of the MMPA, it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process,'' as Congress intended.

Comment 8: NMFS must use the best available science, especially for North Atlantic right whale, including population estimates, recent habitat usage patterns for the study area and up to date seasonality information that may differ from the March-April and November-December migration periods cited in the notice. NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of North Atlantic right whales, as disturbance responses in North Atlantic right whales could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

Response: While NMFS agrees that the best available science must be used for assessing North Atlantic right whale abundance estimates, we disagree that the provided New England Aquarium's (*i.e.,* North Atlantic Right Whale Report Card) 2022 estimate of 340 referenced represents the most recent and best available estimate for North Atlantic right whale abundance. Rather the abundance estimate (338) in the 2022 Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed Renewal IHA, provides the most recent and best available estimate. Furthermore, NMFS notes that the SARs are peer reviewed by statutorily established scientific review groups prior to being finalized and published and that the North Atlantic Right Whale Report Card (Pettis *et al.,* 2022) does not undertake this process.

NMFS further notes that the commenters seem to be conflating the phrase ''best available data'' with ''the most recent data''. The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. We referenced the best available North Atlantic right whale abundance estimate of 338 from the 2022 SARs as NMFS' determination of the best available data that we relied on in our analysis.

NMFS considered the best available science regarding both recent habitat usage patterns for the study area and up-to-date seasonality information in the notice of the proposed IHA, including consideration of existing Biologically Important Areas (BIAs) and densities provided by Roberts *et al.* (2022). While the commenter has suggested that NMFS consider best available information for recent habitat usage patterns and seasonality, it has not offered any additional information for NMFS to consider.

Lastly, any impacts to marine mammals are expected to be temporary and minor given the relative size of the survey area compared to the overall

migratory BIA. The survey area is extremely small (encompassing a small area offshore New England) compared to the size of the North Atlantic right whale migratory BIA (269,448 km2), which spans from Florida to Maine. Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

NMFS agrees that both acute and chronic stressors are of concern for North Atlantic right whale conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, socializing, feeding impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. Because North Atlantic right whales generally use this area for migration, any potential impacts from these surveys are expected to be brief. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor compared with the survey area. Thus, the transitory nature of North Atlantic right whales at this location means it is unlikely for any exposure to cause chronic effects, as the planned survey area and ensonified zones are much smaller than the overall migratory corridor. As such, NMFS does not expect acute or cumulative stress to be a detrimental factor to North Atlantic right whales from Orsted's described survey activities. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for North Atlantic right whales that are expected to further reduce the duration and intensity of acoustic exposure while limiting the potential severity of any possible behavioral disruption.

Lastly, NMFS disagrees that the effects of Orsted's survey may contribute to stunted growth rates as suggested by a commenter. The activities associated with Orsted's survey are outside the scope of activities described in the Steward *et al.* (2021) paper and NMFS does not expect impacts such as these to result from Orsted's described survey activities.

Comment 9: NMFS must make an assessment of which activities, technologies and strategies are truly necessary to achieve site characterization to inform development of the offshore wind projects and which are not critical, asserting that NMFS should prescribe the appropriate survey techniques. NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of lower impact technology and methods to minimize adverse effects (*e.g.,* sound levels) from geophysical surveys.

Response: The MMPA requires that an IHA include measures that will affect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects in and around the survey site and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what may be appropriate techniques or technologies for an operator's survey objectives.

Comment 10: NMFS should require all vessels associated with the site characterization activities to carry and use PSOs at all times when underway. During low visibility conditions, the IHA should require PSO monitoring to include infrared (IR) detection devices. NMFS should restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 knots (kn) at all times due to the risk of vessel strikes to North Atlantic right whales and other large whales. NMFS should require vessels maintain a separation distance of at least 500 m from North Atlantic right whales at all times.

Response: NMFS notes a requirement to utilize PSOs when specific acoustic sources (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers-CHIRPs) are operating, a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours (*see* Condition 4(a)). In addition, visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training (*see* Condition 4(g)(i)).

NMFS notes a requirement to utilize a thermal (infrared) device during low-light conditions was included in the proposed **Federal Register** Notice of the initial IHA. That requirement is included as a requirement of the issued IHA and the Renewal IHA.

While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Orsted's activities and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. The required mitigation measures, all of which were included in the proposed initial IHA and were required in the final IHA (and in this Renewal IHA), include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any Seasonal Management Area (SMA), Dynamic Management Area (DMA), or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-

listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the vessel strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites.

NMFS notes the requirement to maintain a separation distance of at least 500 m from North Atlantic right whales at all times was included in the proposed **Federal Register** Notice and was included as a requirement in the issued IHA (and for the Renewal IH).

Comment 11: The IHA should require all vessels supporting site characterization to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

Response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 12: The IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. The comment further states that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

Response: NMFS notes that the initial and Renewal IHAs authorizes Orsted and and its designees to incidentally harass marine mammals under certain conditions. Nevertheless, NMFS has added language to the Renewal IHA to clarify that the IHA conditions apply to those persons Orsted authorizes or funds to conduct activities on its behalf. The initial and Renewal IHAs also require that a copy of the IHA must be in the possession of Orsted, the vessel operators, the lead PSO, and any other relevant designees of Orsted operating under the authority of this IHA. The IHA also states that Orsted must ensure that the vessel operator and other relevant vessel personnel, including the Protected Species Observer (PSO) team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 13: The IHA must include a requirement for all phases of the site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies. NMFS should require that Orsted report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to NMFS or the U.S. Coast Guard as soon as possible and no later than the end of the PSO shift. In addition, to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

Response: NMFS notes the reporting requirements were included in the proposed IHA and were carried forward into the issued IHA (*see* Condition 6). As such, Orsted is already required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report; sightings of North Atlantic right whales must be reported to the NMFS Right Whale Sightings Advisory System within two hours of occurrence, when practicable, or no later than 24 hours after occurrence; Orsted must also report North Atlantic right whale sighting to the U.S. Coast Guard. Additionally, Orsted must report any discoveries of injured or dead marine mammals to the NMFS Office of Protected Resources and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. This includes entangled animals.

Daily visual and acoustic detections of North Atlantic right whales and other large whale species along the Eastern Seaboard, as well as Slow Zone locations, are publicly available on WhaleMap (*https://whalemap.org/WhaleMap/*). Further, recent acoustic detections of North Atlantic right whales and other large whale species are available to the public on NOAA's Passive Acoustic Cetacean Map website *https://apps-nefsc.fisheries.noaa.gov/pacm/#/narw.* Given the open access to the resources described above, NMFS does not concur that public access to PSO reports is warranted and we have not included this measure in the authorization.

Comment 14: NMFS should require a visual and acoustic clearance zone of at least 1,000 m for North Atlantic right whales during HRG survey activities. If a North Atlantic right whale is observed in the clearance zone then survey activities must cease (*i.e.,* shut down). If a shutdown cannot occur due to human safety, Orsted must immediately notify NMFS with reasons and explanation for exemption and a summary of the frequency of these exceptions must be publicly available to ensure that these are the exception rather than the norm for the project. When safe to resume, HRG surveys should be required to use a soft start, ramp-up procedure to encourage any nearby marine life to leave the area.

Response: NMFS notes that the 500 m clearance and shutdown zones included in the proposed IHA and carried forward in the issued IHA for North Atlantic right whales exceeds the modeled distance to the largest 160 dB Level B harassment isopleth (141 m during sparker use) by a substantial margin. Commenters did not provide additional scientific information for NMFS to consider to support their recommendation to expand the clearance and shutdown zones. Given that these surveys are relatively low impact and that NMFS has prescribed North Atlantic right whale clearance and shutdown zones that are significantly larger (500 m) than the conservatively estimated largest harassment zone (141 m), NMFS has determined that the 500-m zone size is appropriate.

While the IHA requires that Orsted report when a shutdown occurs and if required mitigation was not implemented, NMFS disagrees that data on when shutdowns do not occur due to safety concerns should be made publicly available because the exemption is due to human safety and

is a blanket provision necessary for the safety of the crew and vessels and is not an act of non-compliance with the requirements within the IHA.

NMFS notes the recommendation to require ramp-up is included in the **Federal Register** notice of the proposed IHA (87 FR 52515, August 26, 2022) and the final IHA (87 FR 61575, October 12, 2022), and is required in the Renewal IHA (*see* Condition 4(e)).

Comment 15: In the Renewal application, Orsted proposed lower levels of take for humpback whales, Risso's dolphin, and minke whale than previously authorized in the initial IHA. NMFS must clarify why the lower take levels, including the use of different group size data, was not used in the Renewal IHA and NMFS is choosing to allow more take than requested. Subsequently, NMFS claimed that the 2020–2021 PSO data for humpback and minke whales is the best scientific evidence available, and the 2022 PSO data collected under 87 FR 13975 (March 11, 2022) is not. PSO synthesis from 2019 is not the best scientific evidence available for Risso's dolphins, but PSO data from 2020–2021 is the best scientific evidence available for humpback and minke whales. Kenney and Vigness-Raposa, for reasons unknown, may be used for Risso's dolphins and not for minke whales.

Response: NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. NMFS proposed to authorize the same number of incidental takes for all species as the initial IHA as the activities are identical and we referenced the activity level and data sources (as the best scientific information available) used in the initial IHA, as explained below.

Orsted's Renewal IHA application requested lower take numbers through a combination of slightly fewer survey day (390 verses 400) and referenced different data sources from the initial IHA to inform group sizes for humpback whale (collected under the Northeast Projects IHA (87 FR 13975, March 11, 2022)), minke whale (Kenney and Vigness-Raposa, 2010); and Risso's dolphin (Barkaszi and Kelly, 2019). Orsted decreased the number of survey days from 400 to 390 based on the assumption that subsidiaries of Orsted will have separate incidental take authorizations for marine site characterization surveys in Lease Areas OCS–A 0486 (Revolution Wind; 88 FR 8996, February 10, 2023) and OCS–A 0487 (Sunrise Wind; 87 FR 79072, January 19, 2023) during the proposed effective period of the Renewal IHA. NMFS proposed to authorize incidental take assuming 400 survey days would be necessary as NMFS has not promulgated final rules for Revolution Wind and Sunrise Wind. As the take requested in the renewal application assumed 390 days and not the 400, NMFS applied the prior activity levels from the initial IHA to the species average annual density amount (the initial and renewal used Robert *et al.,* 2022) to estimate take (Estimated take = species density × ZOI × # of survey days). Therefore, the requested take numbers should be consistent with the amounts previously authorized when only considering the number of survey days.

When the group size data were considered, the takes requested by Orsted for these species in their Renewal IHA application were equal to or less than that authorized under the initial IHA. NMFS assessed the changed data sources and chose the best available science and most conservative route to estimate take when adjusted for group size. NMFS refers to our responses pertaining to the best available science in Comments 6 and 8.

In the Renewal IHA application, Orsted referenced data for minke whale using Kenney and Vigness-Raposa (2010), however, the initial IHA application used draft PSO data from surveys conducted in the project lease areas and export cable routes between May 2020 and December 2021 (Table 13 in the initial IHA application). NMFS disagreed with Orsted's use of Kenney and Vigness-Raposa (2010) as the PSO data previously provided was considered the best scientific information available. The ''draft PSO data'' was from ongoing site characterization surveys, spanning nearly two years (May 2020 through December 2021), under previous and existing IHAs in the area (13 minke observed within 500 m of an active sound source). The final PSO data referenced in the Renewal IHA application was collected under one IHA (87 FR 13975, March 11, 2022), though not used by Orsted in their take request, was limited to an observation period of 7 month (March through September 2022) and resulted in a mean group size of 1 (Table 2 in the Renewal IHA application). In their Renewal IHA application, Orsted chose to use a group size adjustment of 9 from Kenney and Vigness-Raposa (2010) and not the final PSO data due to the low group size number (1). As the planned activities may occur in any month of the year, the draft PSO data were over a significantly longer observation period and included year-round PSO data, and to be conservative in estimating the possible level of effect, NMFS chose to utilize the draft PSO data when setting the group size adjustment within the project area for minke (13).

In the Renewal IHA application, Orsted referenced data for humpback whales from PSO data collected in 2022 under 87 FR 13975 (March 11, 2022), however, the initial IHA application used draft PSO data from surveys conducted in the project lease areas and export cable routes between May 2020 and December 2021 (Table 13 in the initial IHA application). As with minke, the draft PSO data was considered the best available science for the group size adjustment (34 observed within 500 m of an active source) as opposed to the final PSO data (mean group size of 2.3; Table 2 in the Renewal IHA application). To be conservative in estimating the possible level of effect, NMFS chose to utilize the draft PSO data due to the longer observation period when setting the group size adjustment within the project area for humpback (34).

In the Renewal IHA application, Orsted referenced data for Risso's dolphin from Barkaszi and Kelly (2019), however, the initial IHA application used Kenney and Vigness-Raposa (2010). NMFS disagrees with the use of Barkaszi and Kelly (2019) as that research is from observations in the Gulf of Mexico and other more geographically appropriate data exists (Kenney and Vigness-Raposa, 2010). Orsted did not use the draft or final PSO data used for minke in their applications; the draft PSO data observed 1 Risso's dolphin within 500 m of an active sound source, the final PSO data collected under 87 FR 13975 had 0 observations (no detections of that species in the PSO records). Due to the lack of observation data on Risso's dolphins through the PSO records, this data source was not appropriate for this particular species and NMFS chose to not use it as the best available science.

The change from 17 to 16 for take by Level B harassment for the North Atlantic right whale was due to a difference in rounding between the initial IHA and Renewal IHA applications. NMFS continued with the previous rounding approach from the initial IHA (17).

Comment 16: Commenters expressed concern regarding ocean noise and the interference it has on whales and other marine mammals' use of echolocation and sonography to communication and travel (*i.e.,* masking).

Response: The commenters did not provide additional scientific information for NMFS to consider. NMFS has carefully reviewed the best

available scientific information in assessing impacts to marine mammals and determined that the surveys have the potential to impact marine mammals through behavioral effects and auditory masking. NMFS agrees that noise pollution in marine waters is an issue and is affecting marine mammals, including their ability to communicate when noise reaches certain thresholds. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Orsted will create conditions of acute or chronic acoustic exposure leading to long-term physiological impacts in marine mammals.

Determinations

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the 2022 SAR estimated abundance of the North Atlantic right whale stock. Specifically, NMFS is proposing to authorize 17 takes of North Atlantic right whales by Level B harassment only, and the impacts resulting from the project's activities are neither reasonably expected nor reasonably likely to adversely affect the stock through effects on annual rates of recruitment or survival. Additionally, approximately 5 percent of the stock abundance is proposed for take by Level B harassment.

Based on the information and analysis contained here and in the referenced documents, including the consideration of the final 2022 SARs, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Orsted's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this Renewal IHA.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources has authorized the incidental take of four species of marine mammals which are listed under the ESA (the North Atlantic right, fin, sei, and sperm whale) and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). The Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of consultation with NMFS GARFO; therefore, the ESA consultation has been satisfied for the initial IHA and remains valid for the Renewal IHA.

Renewal IHA

As a result of these determinations, NMFS has issued a renewal IHA to Orsted for conducting marine site characterization surveys off New York to Massachusetts (Lease Areas OCS–A 0486, 0487, and 0500), effective from October 6, 2023 through October 5, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 29, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–22120 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD449]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The MAFMC's Spiny Dogfish Monitoring Committee will meet via webinar to develop recommendations for future Spiny Dogfish specifications.

DATES: The meeting will be held on Monday, November 6, 2023, from 12:30 p.m. to 3 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the MAFMC calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Spiny Dogfish Monitoring Committee will meet to review options for future specifications and management measures, and make any appropriate recommendations.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–22124 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee Public Meeting

AGENCY: U.S. Integrated Ocean Observing System (IOOS®), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a hybrid meeting of the U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee). The meeting is open to the public and an opportunity for oral and written comments will be provided.

DATES: The meeting will be held both virtually and in person from December 4, 2023 to December 5, 2023. Sessions will occur from 12 p.m. to 5 p.m. (EST) on December 4, 2023 and from 9 a.m. to 5 p.m. (EST) on December 5, 2023. Written public comments should be received by the Designated Federal Official by November 27, 2023.

ADDRESSES: The meeting will be held at the NOAA Center for Weather and Climate Prediction, 5830 University Research Ct., College Park, MD. To register for the meeting and/or submit public comments, use this link *https://forms.gle/CebvvQ28rUW2itWeA* or email *Laura.Gewain@noaa.gov.* See **SUPPLEMENTARY INFORMATION** for instructions and other information about public participation.

FOR FURTHER INFORMATION CONTACT: Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1315 East-West Highway, Silver Spring, MD 20910; Phone 240–533–9455; Fax 301–713–3281; email *krisa.arzayus@noaa.gov* or visit the U.S. IOOS Advisory Committee website at *https://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.*

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. 116–271). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 and section 12304 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary may refer to the Committee for review and advice.

The Committee will provide advice on:

(A) administration, operation, management, and maintenance of the Integrated Coastal and Ocean Observation System (the System);

(B) expansion and periodic modernization and upgrade of technology components of the System;

(C) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in disseminating information to end-user communities and to the general public; and

(D) additional priorities, including—

(1) a national surface current mapping network designed to improve fine scale sea surface mapping using high frequency radar technology and other emerging technologies to address national priorities, including Coast Guard search and rescue operation planning and harmful algal bloom forecasting and detection that—

(i) is comprised of existing high frequency radar and other sea surface current mapping infrastructure operated by national programs and regional coastal observing systems;

(ii) incorporates new high frequency radar assets or other fine scale sea surface mapping technology assets, and other assets needed to fill gaps in coverage on United States coastlines; and

(iii) follows a deployment plan that prioritizes closing gaps in high frequency radar infrastructure in the United States, starting with areas demonstrating significant sea surface current data needs, especially in areas where additional data will improve Coast Guard search and rescue models;

(2) fleet acquisition for unmanned maritime systems for deployment and data integration to fulfill the purposes of this subtitle;

(3) an integrative survey program for application of unmanned maritime systems to the real-time or near real-time collection and transmission of sea floor, water column, and sea surface data on biology, chemistry, geology, physics, and hydrography;

(4) remote sensing and data assimilation to develop new analytical methodologies to assimilate data from the System into hydrodynamic models;

(5) integrated, multi-State monitoring to assess sources, movement, and fate of sediments in coastal regions;

(6) a multi-region marine sound monitoring system to be—

(i) planned in consultation with the IOOC, NOAA, the Department of the Navy, and academic research institutions; and

(ii) developed, installed, and operated in coordination with NOAA, the Department of the Navy, and academic research institutions; and

(E) any other purpose identified by the Administrator or the Council.

Matters To Be Considered

The meeting will focus on: (1) continuing to work on the phase 2 recommendations from the committee workplan, and (2) IOOS Program Office updates. The latest version of the agenda will be posted at *https://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.* The times and the agenda topics described here are subject to change.

Public Comment Instructions

The meeting will be open to public participation (check agenda on website to confirm time). The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by November 27, 2023, to provide sufficient time for Committee review. Written comments received after November 27, 2023, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please fill out the brief form at *https://forms.gle/CebvvQ28rUW2itWeA* or email your comments and the organization/company affiliation you represent to Laura Gewain, *Laura.Gewain@noaa.gov.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official by phone (240–533–9455) or email (*Krisa.Arzayus@noaa.gov)* or to Laura

Gewain (*Laura.Gewain@noaa.gov)* by November 20, 2023.

Carl C. Gouldman,

Director, U.S. Integrated Ocean Observing System Office, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–22151 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD448]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The meeting will be held on Monday, October 30, 2023 from 10 a.m. through 5 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Webinar connection instructions and briefing materials will be available at: *www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will make multi-year acceptable biological catch (ABC) recommendations for Spiny Dogfish and Atlantic Mackerel based on the results of the recently completed management track stock assessments and peer review. The SSC will recommend new 2024–2026 ABC specifications for Spiny Dogfish. The SSC will also review, and potentially revise, their preliminary 2024–2025 ABC recommendations for Atlantic Mackerel based on the peer review results, updated stock projections, and additional guidance from the Council.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: September 29, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–22121 Filed 10–4–23; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2023–0042]

Draft CPSC Scientific Integrity Policy

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is announcing the availability of a proposed Scientific Integrity Policy. This policy is provided in response to the Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking, to ensure that Agency stakeholders are given an opportunity to comment on this policy. Scientific and technical work constitute the foundation upon which the CPSC executes the agency's mission to protect the public against unreasonable risks of injury associated with the use of consumer products. CPSC aims to carry out the agency's mission with integrity, because both policy makers and the public rely upon the work done at the CPSC to ensure the protection of consumers from potential hazards associated with consumer products.

DATES: Submit comments by December 4, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2023–0042, 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 does not accept comments submitted via email, except as described below. CPSC encourages you to submit electronic comments 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 available to the public, you may submit such comments by mail, hand delivery, 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 to 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 review supplemental information, including comments received, regarding the draft policy, go to *https://www.regulations.gov,* and insert the docket number, CPSC–2023–0042, into the ''search'' box, and follow the prompts. The proposed supplemental guidance is available under ''Supporting and Related Material.'' It is also available at *https://www.regulations.gov/document/CPSC-2023-0042-0001* and from the Commission's Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Mary Kelleher, Scientific Integrity Official, Associate Executive Director for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (240) 429–4894 email: *mkelleher@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The proposed draft CPSC Scientific Integrity Policy builds upon the current Statement of Principles: Integrity of the U.S. Consumer Product Safety Commission Staff's Scientific and Technical Work [1] and follows the National Science and Technology

[1] *https://www.cpsc.gov/About-CPSC/Policies-Statements-and-Directives/Statement-of-Principles----------Integrity-of-the-U-S-Consumer-Product-Safety-Commission-Staffs-Scientific-and-Technical-Work.*

Council Framework for Federal Scientific Integrity Policy and Practice.[2] In the draft policy, staff recommends facilitating the free flow of scientific information, protecting against retaliation, and provisions prohibiting both improper interference and inappropriate suppression or delay of scientific findings. The draft policy further establishes procedures for reporting and handling allegations of scientific integrity violations, including those involving alleged political interference.[3]

B. Request for Comments

The Commission invites comments on the proposed policy document, which can be found at *https://www.regulations.gov/document/CPSC-2023-0042-0001.*

The CPSC will consider all timely comments before finalizing the policy. Comments should be submitted by December 4, 2023. Information on how to submit comments can be found in the **ADDRESSES** section of this notice.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–22110 Filed 10–4–23; 8:45 am]

BILLING CODE 6355–01–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: ER23–2959–000.

Applicants: Pennsylvania Electric Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii): PENELEC Amends 10 ECSAs (5788 5789 5792 5911 5912 5917 5919 5920 5925 5928) to be effective 12/31/9998.

Filed Date: 9/29/23.

Accession Number: 20230929–5034.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2960–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: Revisions to Schedule 1—WEIS Charges to be effective 1/1/2024.

Filed Date: 9/29/23.

Accession Number: 20230929–5064.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2961–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–09–29_SA 4170 OTP-Minnkota Power FCA (Erie) to be effective 11/29/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5073.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2962–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–09–29_SA 2912 Termination of WPSC–WPSC FCA (Gaylord) (J392) to be effective 9/30/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5123.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2963–000.

Applicants: Oakland Power Company LLC.

Description: Tariff Amendment: Notice of Termination of Must-Run Service Agreement to be effective 1/1/2024.

Filed Date: 9/29/23.

Accession Number: 20230929–5155.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2964–000.

Applicants: East Kentucky Power Cooperative, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: East Kentucky Power Cooperative, Inc. submits tariff filing per 35.13(a)(2)(iii): PJM TOs CTOA Amendments re Order 881 Transmission Line Ratings to be effective 7/12/2025.

Filed Date: 9/29/23.

Accession Number: 20230929–5184.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2965–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2023 Production WEIS Admin Fee to be effective 1/1/2024.

Filed Date: 9/29/23.

Accession Number: 20230929–5196.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2966–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Oct 2023 Membership Filing to be effective 10/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5211.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2967–000.

Applicants: Toms River Net Meter Solar, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/30/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5232.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2968–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Balancing Accounts Update 2024 (TRBAA, RSBAA, ECRBAA) to be effective 1/1/2024.

Filed Date: 9/29/23.

Accession Number: 20230929–5260.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2969–000.

Applicants: California Independent System Operator Corporation.

Description: Tariff Amendment: 2023–09–29 Termination—Split Resource—Calpine and Sutter to be effective 11/29/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5265.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2970–000.

Applicants: Basin Electric Power Cooperative.

Description: § 205(d) Rate Filing: Basin Electric Power Cooperative, Submission of Revised Rate Schedule A to be effective 1/1/2024.

Filed Date: 9/29/23.

Accession Number: 20230929–5268.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2971–000.

Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii): NYISO–NYSEG Joint 205: EPC Agreement for Alle Catt II Wind project (SA2794) to be effective 9/15/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5269.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2972–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 4316; Queue No. AE2–183 to be effective 8/30/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5278.

Comment Date: 5 p.m. ET 10/20/23.

Docket Numbers: ER23–2973–000.

Applicants: Mule Shoe Energy Storage LLC.

Description: Request for Limited, Prospective Waiver, et al. of Mule Shoe Energy Storage LLC.

[2] *https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf.*

[3] On September 27, 2023, the Commission voted 4–0 to approve publication of this notice.

Filed Date: 9/28/23.

Accession Number: 20230928–5176.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: ER23–2974–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–09–29 2023 Grid Management Charge—Cost-of-Service Study Update to be effective 1/1/2024.

Filed Date: 9/29/23.

Accession Number: 20230929–5304.

*Comment Date:*5 p.m. ET 10/20/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–86–000.

Applicants: Allegheny Generating Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Allegheny Generating Company.

Filed Date: 9/28/23.

Accession Number: 20230928–5146.

Comment Date: 5 p.m. ET 10/19/23.

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 29, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22208 Filed 10–4–23; 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: RP23–1089–000.

Applicants: West Texas Gas Utility, LLC.

Description: Annual Purchased Gas Cost Reconciliation Report of West Texas Gas Utility, LLC.

Filed Date: 9/28/23.

Accession Number: 20230928–5113.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: RP23–1090–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Nextera NRAs eff 10–01–23 to be effective 10/1/2023.

Filed Date: 9/28/23.

Accession Number: 20230928–5115.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: RP23–1091–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Action Alert Penalty Provisions Modification to be effective 11/1/2023.

Filed Date: 9/28/23.

Accession Number: 20230928–5125.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: RP23–1092–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements—10/1/2023 to be effective 10/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5007.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1093–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing—Effective November 1, 2023 to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5008.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1094–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: § 4(d) Rate Filing: EGTS—2023 Annual EPCA to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5011.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1095–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: § 4(d) Rate Filing: EGTS—2023 Annual TCRA to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5012.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1096–000.

Applicants: Enable Mississippi River Transmission, LLC.

Description: § 4(d) Rate Filing: 2023 MRT Annual Fuel Filing to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5014.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1097–000.

Applicants: National Fuel Gas Supply Corporation.

Description: § 4(d) Rate Filing: GT&C Section 42 GHG/PS Filing 2023 to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5016.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1098–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) Rate Filing: 2023 Negotiated SA—ONEOK (FT–1917) to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5017.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–000.

Applicants: Gas Transmission Northwest LLC.

Description: § 4(d) Rate Filing: GTN Section 4 Rate Case (1 of 7) to be effective 4/1/2024.

Filed Date: 9/29/23.

Accession Number: 20230929–5022.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1100–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) Rate Filing: 2023 Non-Conforming Negotiated Rate Service Agreement—LS15 Expansion to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5024.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1101–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Filing on 9–29–2023 to be effective 11/1/2023.

Filed Date: 9/29/23.

Accession Number: 20230929–5027.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1102–000.

Applicants: Carolina Gas Transmission, LLC.
Description: § 4(d) Rate Filing: CGT—2023 FRQ and TDA Report to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5028.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1103–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Pipeline Safety and Greenhouse Gas Cost Adjustment Mechanism—2023 to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5037.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1104–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 9–29–23 to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5042.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1105–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2023 Housekeeping Filing to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5049.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1106–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: MNUS FRQ 2023 Filing to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5054.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1107–000.
Applicants: Carlsbad Gateway, LLC.
Description: § 4(d) Rate Filing: Carlsbad Gateway Annual Fuel Use—Lost Gas Adjustment Filing to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5060.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1108–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing: Annual Report of Flow Through filed 9–29–23 to be effective N/A
Filed Date: 9/29/23.
Accession Number: 20230929–5063.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1109–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Compliance filing: Operational Purchase and Sale Report 2023 to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5068.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1110–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 10–1–2023 to be effective 10/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5074.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1111–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Non Conforming Negotiated Rate Agreement (Oneok Rockies) to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5077.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1112–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 10–1–23 to be effective 10/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5079.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1113–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing: AGT September 2023 OFO Penalty Disbursement Report to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5085.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1114–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Oct 2023 to be effective 10/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5089.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1115–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Non-Conforming Agreements & Terminations—Citadel, Intermountain & Occidental to be effective 10/31/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5091.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1116–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: 2023 Fuel Tracker Filing to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5096.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1117–000.
Applicants: Young Gas Storage Company, Ltd.
Description: Compliance filing: Operational Purchase and Sale Report 2023 to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5097.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1118–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20230929 Negotiated Rate to be effective 10/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5107.
Comment Date: 5 p.m. ET 10/11/23
Docket Numbers: RP23–1119–000.
Applicants: MountainWest Overthrust Pipeline, LLC.
Description: § 4(d) Rate Filing: Amended Non-conforming TSAs WIC 6471 and 6472 to be effective 10/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5127.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1120–000.
Applicants: MountainWest Pipeline, LLC.
Description: § 4(d) Rate Filing: Statement of Negotiated Rates V23—Wapiti 7070 to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5132.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1121–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: § 4(d) Rate Filing: SGSC 2023 Fuel Filing to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5136.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1122–000.
Applicants: Gulf Run Transmission, LLC.
Description: § 4(d) Rate Filing: Amended NRA—Rockcliff to be effective 10/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5140.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP23–1123–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming—McMullen Supply Enhancement to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5149.
Comment Date: 5 p.m. ET 10/11/23.

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.

Filings in Existing Proceedings

Docket Numbers: RP22–1031–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: Refund Report: RP22–1031–000 Refund Report to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5093.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP22–1222–004.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Compliance filing: Settlement Compliance-Implementation of November 1, 2023 Rates to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5045.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1039–001.
Applicants: Venture Global Gator Express, LLC.
Description: Tariff Amendment: Amendment to 1—Part 4 section 23 to be effective 10/31/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5134.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–000.
Applicants: Gas Transmission Northwest LLC.
Description: Report Filing: GTN Section 4 Rate Case (2 of 7) to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5065.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–000.
Applicants: Gas Transmission Northwest LLC.
Description: Report Filing: GTN Section 4 Rate Case (3 of 7) to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5080.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–000.
Applicants: Gas Transmission Northwest LLC.
Description: Report Filing: GTN Section 4 Rate Case (4 of 7) to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5101.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–000.
Applicants: Gas Transmission Northwest LLC.
Description: Report Filing: GTN Section 4 Rate Case (5 of 7) to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5104.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–000.
Applicants: Gas Transmission Northwest LLC.
Description: Report Filing: GTN Section 4 Rate Case (6 of 7) to be effective N/A.
Filed Date: 9/29/230
Accession Number: 20230929–5111.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–000.
Applicants: Gas Transmission Northwest LLC.
Description: Report Filing: GTN Section 4 Rate Case (7 of 7) to be effective N/A.
Filed Date: 9/29/23.
Accession Number: 20230929–5119.
Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: RP23–1099–001.
Applicants: Gas Transmission Northwest LLC.
Description: Tariff Amendment: GTN Section 4 Rate Case Amendment—Eff Nov 1, 2023 to be effective 11/1/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5061.
Comment Date: 5 p.m. ET 10/11/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: September 29, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22203 Filed 10–4–23; 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: EC23–138–000.
Applicants: Montour, LLC, Talen Conemaugh LLC, Talen Keystone LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Montour, LLC, et al.
Filed Date: 9/28/23.
Accession Number: 20230928–5147.
Comment Date: 5 p.m. ET 10/19/23.

Docket Numbers: EC23–139–000.
Applicants: Elk Wind Energy LLC, Bethel Wind Energy LLC, Zephyr Wind, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Elk Wind Energy LLC, et al.
Filed Date: 9/28/23.
Accession Number: 20230928–5154.
Comment Date: 5 p.m. ET 10/19/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–309–000.
Applicants: MS Solar 6, LLC.
Description: MS Solar 6, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 9/29/23.
Accession Number: 20230929–5004.
Comment Date: 5 p.m. ET 10/20/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–104–000.
Applicants: Enerwise Global Technologies, LLC v. PJM Interconnection, L.L.C.
Description: Complaint of Enerwise Global Technologies, LLC d/b/a CPower vs. PJM Interconnection, L.L.C.
Filed Date: 9/28/23.
Accession Number: 20230928–5025.
Comment Date: 5 p.m. ET 10/18/23.

Docket Numbers: EL23–105–000.
Applicants: The Office of the Ohio Consumers' Counsel v. PJM Interconnection, L.L.C., et al.
Description: Complaint of The Office of the Ohio Consumers' Counsel v. PJM Interconnection, L.L.C., et al.

Filed Date: 9/28/23.
Accession Number: 20230928–5134.
Comment Date: 5 p.m. ET 10/18/23.
Docket Numbers: EL23–106–000.
Applicants: Summit Ridge Energy, LLC and Osaka Gas USA Corporation.
Description: Petition for Declaratory Order of Summit Ridge Energy, LLC and Osaka Gas USA Corporation.
Filed Date: 9/28/23.
Accession Number: 20230928–5174.
Comment Date: 5 p.m. ET 10/30/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–714–005.
Applicants: Whitetail Solar 1, LLC.
Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 9/6/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5174.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER20–1851–006.
Applicants: Whitetail Solar 3, LLC.
Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 9/6/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5176.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER21–936–003.
Applicants: Whitetail Solar 2, LLC.
Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 1/26/2021.
Filed Date: 9/29/23.
Accession Number: 20230929–5175.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER21–1633–003.
Applicants: Elk Hill Solar 2, LLC.
Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 4/8/2021.
Filed Date: 9/29/23.
Accession Number: 20230929–5180.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER22–2114–001.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: East Kentucky Power Cooperative, Inc. submits tariff filing per 35: PJM TOs Notification of Effective Date for Interconnection Reforms in ER22–2114 to be effective 10/5/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5145.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER22–2359–002.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Orders Nos. 881 and 881–A Compliance Filing to be effective 12/31/9998.
Filed Date: 9/29/23.
Accession Number: 20230929–5223.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER23–2374–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment of ISA/CSA, SA No. 6990 and 6991; Queue No. AE2–166, Docket No. ER23–2374 to be effective 9/11/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5161.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER23–2374–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Response to Commission's 9/1/23 Deficiency Letter in ER23–2347 to be effective 9/11/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5252.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER23–2956–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2023–09–28 Tariff Amendment to Update Variable Operations and Maintenance Adders to be effective 12/31/9998.
Filed Date: 9/28/23.
Accession Number: 20230928–5150.
Comment Date: 5 p.m. ET 10/19/23.
Docket Numbers: ER23–2957–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Origis Development (Pelham Solar + Storage) LGIA Filing to be effective 9/22/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5010.
Comment Date: 5 p.m. ET 10/20/23.
Docket Numbers: ER23–2958–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5995; Queue No. AD2–160/AE2–253 to be effective 11/29/2023.
Filed Date: 9/29/23.
Accession Number: 20230929–5026.
Comment Date: 5 p.m. ET 10/20/23.

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 29, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22212 Filed 10–4–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2939–000]

Wolfskin 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 Wolfskin 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 19, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: September 29, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22207 Filed 10–4–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4334–017]

EONY Generation Limited; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the Philadelphia Hydroelectric Project. The project is located on the Indian River and Black Creek, in the Village of Philadelphia, in Jefferson County, New York. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA 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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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 docket number P–4334–017.

For further information, contact Monir Chowdhury at (202) 502–6736 or by email at *monir.chowdhury@ferc.gov.*

Dated: September 29, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22204 Filed 10–4–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11367–01–R6]

Public Water System Supervision Program Revision for the State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given that the State of Texas is revising its approved Public Water System Supervision (PWSS) program. Texas has adopted the Environmental Protection Agency (EPA) drinking water rules for the Revised Total Coliform Rule (RTCR) and Ground Water Rule (GWR). Therefore, EPA intends to approve these PWSS program revision packages.

DATES: Comments or a request for a public hearing must be submitted by November 6, 2023, to the Regional Administrator at the EPA Region 6 address shown below.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Texas Commission on Environmental Quality, Water Supply Division, Public Drinking Water Section (MC–155), Building F, 12100 Park 35 Circle, Austin, TX 78753;

and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WD–DD), 1201 Elm St., Dallas, TX 75270.

FOR FURTHER INFORMATION CONTACT: José G. Rodriguez, EPA Region 6, Drinking Water Section at the Dallas address given above, or by telephone at (214) 665–8087, or by email at *Rodriguez.Jose@epa.gov.*

SUPPLEMENTARY INFORMATION: Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by November 6, 2023, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on their own motion, this determination shall become final and effective. EPA will publish a document in the **Federal Register** announcing the date this determination becomes final and effective.

Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Texas has adopted the Environmental Protection Agency (EPA) drinking water rules for the Revised Total Coliform Rule (RTCR) and Ground Water Rule (GWR). EPA has determined that the RTCR and GWR submitted by Texas are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these PWSS program revision packages.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: September 19, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–20668 Filed 10–4–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0910; FR ID 176302]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 4, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0910.

Title: Third Report and Order in CC Docket No. 94–102 to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 594 respondents; 594 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. 1, 4(i), 201, 303, 309 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 594 hours.

Total Annual Cost: No cost.

Needs and Uses: The information submitted to the Commission will provide public service answering points (PSAPs), providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for full Phase II E911 service implementation.

These reports will provide helpful, if not essential information for coordinating carrier plans with those of manufacturers and PSAPs. The reports will also assist the Commission's efforts to monitor Phase II developments and to take action, if necessary, to maintain the Phase II implementation schedule.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22165 Filed 10–4–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1004; FR ID 176657]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to

take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 4, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1004.

Title: Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 235 respondents; 565 responses.

Estimated Time per Response: 3.8 hours.

Frequency of Response: One-time and quarterly reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. 1, 4(i), 201, 303, 309 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,145 hours.

Total Annual Cost: No Cost.

Needs and Uses: The existing information collection is based on the Commission's regulatory authority pursuant to its regulatory responsibilities under the Omnibus Budget Reconciliation Act of 1993 (''OBRA–1993''), which added section 309(j) to the Communications Act of 1934.

Given that delays in compliance could impact the delivery of safety-of-life services to the public, it is imperative that the CMRS carriers be brought into compliance, required in the various orders, and that the reports and compliance plans be timely submitted by the carriers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22217 Filed 10–4–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 176663]

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/CGB–2, Comment Filing System (ECFS), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Commission uses this system to handle and process public comments related to FCC rulemakings and other proceedings. This modification changes the name of the former FCC/CGB–2 SORN to FCC/OS–1 and makes various necessary changes and updates, including clarification of the purpose of the system, formatting changes required by OMB Circular A–108 since its previous publication, and the addition of new routine uses.

DATES: This modified system of records will become effective on October 5, 2023. Written comments on the routine uses are due by November 6, 2023. The routine uses in this action will become effective on November 6, 2023 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Katherine C. Clark, Federal Communications Commission, 45 L Street NE, Washington, DC 20554 or *privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine C. Clark, (202) 418–1773, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which include details of the proposed alterations to this system of records).

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed modification of a system of records maintained by the FCC. The FCC previously provided notice of the system of records, FCC/CGB–2 by publication in the **Federal Register** on April 5, 2006 (71 FR 417236).

This notice serves to update and modify FCC/CGB–2 and rename it FCC/OS–1 as a result of the various necessary changes and updates since its previous publication. The substantive changes and modifications to the previously published version of the FCC/CGB–2 system of records include:

1. Updating the name of the SORN from FCC/CGB–2, Comment Filing System (ECFS), to FCC/OS–1, Electronic Comment Filing System (ECFS) to reflect that the FCC's Office of the Secretary has replaced the Consumer and Governmental Affairs Bureau as the system manager;

2. Modifying the language in the Categories of Individuals and Categories of Records to be consistent with the language and phrasing now used in FCC SORNs;

3. Updating and/or revising language in the following five routine uses (listed by current routine use number): (1) Public Access; (2) FCC Enforcement Actions; (5) Law Enforcement and Investigation; (6) Congressional Inquiries; and (7) Government-wide Program Management and Oversight;

4. Converting the former Adjudication and Litigation routine use into two separate revised routine uses: (3) Litigation and (4) Adjudication;

5. Adding three new routine uses (listed by current routine use number): (8) Breach Notification, which is required by OMB Memorandum No. M–17–12, (9) Assistance to Federal Agencies and Entities Related to Breaches—to assist with other Federal agencies' data breach situations, which is also required by OMB Memorandum No. M–17–12; and (10) Non-Federal Personnel—to allow contractors, vendors, grantees, and volunteers who

have been engaged to assist the FCC in the performance of a contract service, grant, or cooperative agreement to access necessary information;

6. Adding a reference to the appropriate records retention and disposal schedule.

SYSTEM NAME AND NUMBER:

FCC/OS–1, Electronic Comment Filing System (ECFS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, PA 17325.

SYSTEM MANAGER(S):

Office of the Secretary, Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. chapter 36; 47 U.S.C. 151 and 154; and sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794.

PURPOSE(S) OF THE SYSTEM:

The ECFS collects comments received by the FCC, whether electronically through the ECFS via an internet web-browser, by mail, or by hand delivery of paper copy, as well as other files and records submitted in response to Commission rulemakings and docketed proceedings, and by the FCC's administrative law staff as the repository for official records for administrative proceedings. In order to comply with the requirements of various statutes and regulations, the FCC offers multiple avenues through which the public can be involved in the FCC decision-making process and can inform the FCC of concerns regarding compliance with FCC rules and requirements. Collecting and maintaining these types of information allows the FCC to be fully informed in decision-making, implementation, and enforcement endeavors. The ECFS also allows staff access to documents necessary for key activities discussed in this SORN including analyzing effectiveness and efficiency of related FCC programs and informing future rule and policy-making activity, and improve staff efficiency. Records in this system are available for public inspection.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and representatives of groups, companies, and other entities who have filed comments as well as other files and records in FCC rulemakings and docketed proceedings or other matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Comments received by the FCC, whether electronically through the Electronic Comment Filing System (ECFS) via an internet web-browser, by mail, or by hand delivery of paper copy. The system also contains other files and records submitted in response to Commission rulemakings and docketed proceedings, and by the FCC's administrative law staff as the repository for official records arising out of the conduct of administrative proceedings.

RECORD SOURCE CATEGORIES:

Information in this system is provided by individuals, groups, companies, and other entities who make or provide comments or other files and records in FCC rulemakings and docketed proceedings, as well as FCC staff.

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, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Public Access—Under the rules of the Commission, public comments as well as other files and records submitted in rulemakings and other docketed proceedings are routinely available to the public—unless confidentiality is requested (47 CFR 0.459)—via the ECFS and may also be disclosed to the public in Commission releases.

2. FCC Enforcement Actions—When a record in this system involves an informal complaint filed alleging a violation of FCC rules, regulations, orders, or requirements by an applicant, licensee, certified or regulated entity, or an unlicensed person or entity, the complaint may be provided to the alleged violator for a response. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

3. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

4. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

5. Law Enforcement and Investigation—To disclose pertinent information to appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

6. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

7. Government-wide Program Management and Oversight—To DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to OMB to obtain that office's advice regarding obligations under the Privacy Act.

8. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission 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 system, programs, and operations), the Federal Government, or national security; and; and (c) 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.

9. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, *e.g.,* individual name, entity name, rulemaking number, and/or docket number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule 6.6: Rulemaking Records (DAA–GRS–2017–0012).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored in a database housed in the FCC computer network. While comments and other files and records are generally publicly available, access to certain information associated with filings is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

71 FR 17236 (April 5, 2006).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–22161 Filed 10–4–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than October 20, 2023.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Charles Bowen Blanchard, as trustee of the Blanchard Living Trust, the Kate Elizabeth Blanchard Irrevocable Trust, and the Bowen Dodd Blanchard Irrevocable Trust, all of Russellville, Arkansas; Cynthia Bowen Blanchard Dynasty Trust, Cynthia Bowen Blanchard, as trustee, both of Russellville, Arkansas; Mary Patricia Bowen Barker Legacy Trust, Mary Patricia Bowen Barker, as trustee, both of Little Rock, Arkansas; William Scott Bowen Legacy Trust, William Scott Bowen, as trustee, both of Little Rock, Arkansas; Leslie Allison Blanchard, Russellville, Arkansas; Mary Patricia Hardman, individually and as trustee of the Emma Ruth Hardman Irrevocable Trust and the Abby Elizabeth Hardman Irrevocable Trust, all of Fayetteville, Arkansas; and John Keith Hardman, Fayetteville, Arkansas;* as part of a family control group acting in concert, to retain voting shares of First State Banking Corp, and thereby indirectly retain voting shares of First State Bank, both of Russellville, Arkansas.

In addition, Charles Bowen Blanchard, as trustee of the Charles B. Blanchard 2022 Trust and the Charles B. Blanchard Revocable Trust, all of Russellville, Arkansas; Charles H. Blanchard 2022 Trust, Charles H. Blanchard, as trustee, both of

Russellville, Arkansas; Cynthia Bowen Blanchard GST Exempt Trust, Cynthia Bowen Blanchard, as trustee, both of Russellville, Arkansas; Mary Patricia Bowen Barker GST Exempt Trust, Mary Patricia Bowen Barker, as trustee, both of Little Rock, Arkansas; William Scott Bowen GST Exempt Trust, William Scott Bowen, as trustee, both of Little Rock, Arkansas; as part of a family control group acting in concert, to acquire voting shares of First State Banking Corp, and thereby indirectly acquire voting shares of First State Bank, both of Russellville, Arkansas.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *James F. O'Neal as trustee of the Patrick B. O'Neal Irrevocable Trust dated June 25, 2009, James Christopher O'Neal Irrevocable Trust dated June 25, 2009, and James F. O'Neal and Bonnie O'Neal Irrevocable Grandchildren's Trust dated September 2, 2010, all of Lamar, Missouri; Patrick B. O'Neal and Michelle Boehm O'Neal Revocable Trust dated October 21, 2020, Patrick B. O'Neal and Michelle O'Neal as co-trustees, and Christopher J. O'Neal, all of Lamar, Missouri,* to become members of the James F. O'Neal Family Control Group, a group acting in concert, to retain voting shares of Lamar Trust Bancshares, Inc., and thereby indirectly retain voting shares of Lamar Bank and Trust Company, all of Lamar, Missouri. James F. O'Neal has previously been permitted by the Federal Reserve System to acquire control of voting shares of Lamar Trust Bancshares, Inc., and thereby indirectly acquire control of voting shares of Lamar Bank and Trust Company, and is currently a member of the James F. O'Neal Family Control Group.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–22216 Filed 10–4–23; 8:45 am]

BILLING CODE P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; System Records

AGENCY: Office of Government Ethics.

ACTION: Notice of a new system of records.

SUMMARY: The Office of Government Ethics (OGE) proposes to create a new internal system of records pursuant to the provisions of the Privacy Act of 1974. This system of records contains all OGE personnel records that are subject to the Privacy Act but are not covered in the notices of systems of records published by other agencies or other OGE internal systems of records.

DATES: This system of records will be effective on October 5, 2023, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by November 6, 2023.

ADDRESSES: Comments may be submitted to OGE, by any of the following methods:

Email: usoge@oge.gov (Include reference to ''OGE/INTERNAL–8 comment'' in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Jennifer Matis, Privacy Officer, Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis at the U.S. Office of Government Ethics; telephone: 202–482–9216; TTY: 800–877–8339; email: *jmatis@oge.gov.*

SUPPLEMENTARY INFORMATION: OGE proposes to create a new internal system of records containing all personnel records that are subject to the Privacy Act but are not covered in the notices of systems of records published by other agencies or other internal OGE systems of records. This includes, but is not limited to, records related to internal diversity, equity, inclusion, and accessibility (DEIA) initiatives, suitability determinations and other personnel security matters, professional development, and employee productivity and engagement.

SYSTEM NAME AND NUMBER:

OGE/INTERNAL–8, Employee Personnel Files Not Covered by Other Notices.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is located at OGE's offices and/or in a secure cloud service provided environment. OGE's street address is 1201 New York Avenue NW, Suite 500, Washington, DC 20005–3917. After February 1, 2024, OGE's street address will be Office of Government Ethics, Suite 750, 250 E Street SW, Washington, DC 20024.

SYSTEM MANAGER(S):

Dale Christopher, Deputy Director for Compliance, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapters 131 and 73; 44 U.S.C. 3101; 5 U.S.C. 301; 5 U.S.C. chapter 79; Federal Preparedness Circular (FPC) 65, July 26, 1999; Homeland Security Presidential Directive 12 (HSPD–12); Federal Information Processing Standard 201: Policy for a Common Identification Standard for Federal Employees and Contractors; Executive Orders 13764, 13988, and 14035.

PURPOSE(S) OF THE SYSTEM:

The purpose is to allow OGE to fulfill its personnel responsibilities pursuant to Federal law, regulation, and Executive Order.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees of OGE, applicants, detailees, contract employees, and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records relating to OGE personnel that are subject to the Privacy Act but not are covered in the governmentwide notices of systems of records published by other agencies with influence upon personnel management at the agency (such as the Office of Personnel Management, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of State, or Department of Labor) or other OGE internal systems of records.

The information in this system may include, but is not limited to: name; positions held or sought; demographic information; skills assessments; qualifications, training, and employment history; counseling and reprimands; employee professional development records; incentives and awards; employee relations information; work-related injury or illness claims; work assignments and productivity information; information regarding applicant and exit interviews; information regarding details, retirements, and separations; information regarding within-grade increases and denials; information regarding employee engagement and work satisfaction; workplace safety and security information; suitability records; Student Loan Repayment Program (SLRP) records; and Continuity of Operations Plan (COOP) records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual on whom

the record is maintained or from other federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose information to the appropriate Federal agency or Federal contractor when necessary to obtain an employment-related benefit for the individual.

b. To disclose information to the appropriate agency (whether Federal, state, local, or foreign) when necessary to comply with an enforceable statute, contract, rule, regulation, or order.

c. To disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

d. To disclose information to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552) or as necessary to defend OGE from litigation under such Act.

e. To disclose information to officials of the Office of Management and Budget, General Services Administration, Office of Personnel Management, Merit Systems Protection Board, Office of the Special Counsel, Federal Labor Relations Authority, Equal Employment Opportunity Commission, Department of State, or Department of Labor when requested in performance of their authorized duties.

f. To disclose information to the Office of Personnel Management: for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related workforce studies.

g. To disclose information to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718).

h. To disclose information when OGE determines that the records are arguably relevant and necessary to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

i. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

j. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

k. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

l. To disclose information to appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (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 OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

m. To disclose information to another Federal agency or Federal entity, when OGE 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are generally retrieved by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are covered by disposition authorities that are specific to the record and may either be a General Records Schedule (GRS) or an agency-specific authority.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Hardcopy records are maintained in file cabinets which may be locked or in specified areas to which only authorized personnel have access. Electronic records are maintained on the OGE network. They are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RECORD ACCESS PROCEDURES:

Individuals requesting access to this system of records must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

None.

Approved: September 28, 2023.

Shelley K. Finlayson,

Acting Director, U.S. Office of Government Ethics.

[FR Doc. 2023–22167 Filed 10–4–23; 8:45 am]

BILLING CODE P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; System Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of a modified system of records.

SUMMARY: The Office of Government Ethics (OGE) proposes to revise one of its existing internal systems of records pursuant to the provisions of the Privacy Act of 1974. This system of records currently contains personally identifiable information (PII) collected from Federal employees and/or members of the public who register to attend or otherwise participate in OGE meetings and events. The system is

currently designated OGE/INTERNAL–6, Online Registration for OGE-Hosted Meetings and Events. OGE proposes to revise the system of records to contain additional records associated with OGE professional development offerings, including ongoing educational and certification programs, as well as the one-time events currently covered. OGE also proposes to change the name to reflect these changes.

DATES: The revisions will be effective on October 5, 2023, subject to a 30-day period in which to comment on the new routine uses, described below. Please submit any comments by November 6, 2023.

ADDRESSES: Comments may be submitted to OGE, by any of the following methods:

Email: usoge@oge.gov (Include reference to ''OGE/INTERNAL–6 comment'' in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Jennifer Matis, Associate Counsel, Washington, DC 20005–3917.

Instructions: Comments may be posted on OGE's website, *https://www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis at the U.S. Office of Government Ethics; telephone: 202–482–9229; TTY: 800–877–8339; email: *jmatis@oge.gov.*

SUPPLEMENTARY INFORMATION: The Office of Government Ethics (OGE) is revising one of its existing internal systems of records pursuant to the provisions of the Privacy Act of 1974. This system of records currently contains personally identifiable information (PII) collected from Federal employees and/or members of the public who register to attend or otherwise participate in OGE-hosted meetings and events. The system is currently designated OGE/INTERNAL–6, Online Registration for OGE-Hosted Meetings and Events.

OGE proposes to revise the system of records to contain additional records associated with OGE professional development offerings, including ongoing educational, training, and certification programs as well as the one-time events currently covered. Since OGE/INTERNAL–6 was first created, OGE has expanded its professional development offerings to incorporate additional formats beyond classroom-style training sessions and the National Government Ethics Summit. These expanded programs, as well as governmentwide equity and customer service initiatives, necessitate that OGE collect and maintain PII beyond what was previously required. By expanding the purpose of the system and the categories of records in the system, OGE will be able to ensure that it can continue to carry out its statutory duty to provide professional development in support of the executive branch ethics program, and do so in compliance with the Privacy Act.

OGE also proposes to change the name of the system to reflect these changes, add three routine uses to address the planned uses of the information collected, update a citation to the Ethics in Government Act, and update its street address.

SYSTEM NAME AND NUMBER:

OGE/INTERNAL–6, Registration and Administration Records for OGE-Hosted Meetings, Events, Educational and Training Programs, and Professional Development Offerings.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Washington, DC 20005–3917. After February 1, 2024, OGE's street address will be Office of Government Ethics, Suite 750, 250 E Street SW, Washington, DC 20024.

Records may be kept in commercial third-party applications, including *Pay.gov,* located at the Department of the Treasury, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC 20227.

SYSTEM MANAGER(S):

Nicole Stein, Chief, Agency Assistance Branch, Office of Government Ethics. See the System Location section for street address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 13122 (Ethics in Government Act of 1978); 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

The purpose is to collect and maintain information necessary to plan and administer OGE meetings, events, educational and training programs, and professional development offerings. This includes information on participants who apply for, register for, or agree to present at an in-person or online meeting, event, educational and training program, or professional development offering. It also includes information on the collection of registration fees, information used to create printed materials such as nametags, tent cards, event programs and directories, and completion certifications, and demographic and other information used to improve OGE's offerings. The information collected will also be used for the purpose of improving the effectiveness of OGE's offerings, in order to inform future decisions and resource allocation, and comply with executive branch-wide evaluation and reporting requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees in the executive branch, and/or members of the public who apply for, register to attend, or otherwise participate in OGE-hosted meetings, events, educational and training programs, or professional development offerings.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains personally identifiable information (PII) collected from individuals registering to attend or otherwise participate in OGE meetings, events, educational and training programs, and professional development offerings. The PII collected includes name, agency/organization, position title, grade level, address, telephone number, email address, state, city or town, country, number of years worked in the field of ethics, percentage of time spent performing ethics duties, special accommodations requests, previous professional development completed, demographic information (*e.g.,* whether a participant identifies as a member of an underserved community), and application information such as letters of recommendation for acceptance into a program, applicants' level of expertise in particular areas of government ethics work, and applicants' resumes.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual on whom the record is maintained, or by the individual's organization if the organization is registering an individual on their behalf.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose information to all event participants for the purposes of displaying names and other personal information on event materials such as name badges, tent cards, or event programs or directories.

b. To share participants' biographical and/or contact information with other participants for the purpose of facilitating networking, mentoring relationships, and/or other cooperative professional development opportunities.

c. To disclose information to vendors, venues, or other Federal agencies for the purposes of event planning and/or venue security.

d. To provide confirmation or certification of completion and/or evaluations to the individuals registered for OGE meetings, events, educational and training programs, and professional development offerings.

e. To provide confirmation or certification of completion and/or evaluations for executive branch ethics officials registered for OGE meetings, events, educational and training programs, and professional development offerings to any individuals responsible for reviewing, approving, and/or recommending training at the ethics officials' employing agencies.

f. To disclose to other executive branch agencies and the public, summary data on OGE meetings, events, educational and training programs, and professional development offerings as part of internal OGE Annual Performance Reports, Equity and DEIA reports, and other evaluations of OGE programs.

g. To disclose information when OGE determines that the records are arguably relevant and necessary to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

h. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To disclose information to appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (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 OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

j. To disclose information to another Federal agency or Federal entity, when OGE 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records may be retrieved by name or other data elements such as an individual's agency.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with General Records Schedule 6.4, item 010, Public affairs-related routine operational records, administrative event records are destroyed when 3 years old, or no longer needed, whichever is later. In accordance with General Records Schedule 2.6, item 020, Ethics training records, ethics training records are destroyed when 6 years old or when superseded, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Hardcopy records are maintained in file cabinets which may be locked or in specified areas to which only authorized personnel have access. Electronic records are maintained either on the OGE network, in OGE internal applications, or in third party applications like Pay.gov, which is used to manage paid registrations. They are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RECORD ACCESS PROCEDURES:

Individuals requesting access to this system of records must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

84 FR 70191.

Approved: September 28, 2023.

Shelley K. Finlayson,

Acting Director, U.S. Office of Government Ethics.

[FR Doc. 2023–22168 Filed 10–4–23; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Evidence Map on Home and Community Based Services

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Evidence Map on Home and Community Based Services,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before November 6, 2023.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Evidence Map on Home and Community Based Services.* AHRQ is conducting this review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Evidence Map on Home and Community Based Services.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/evidence-map/protocol.* This is to notify the public that the EPC Program would find the following information on *Evidence Map on Home and Community Based Services* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Guiding Questions

1. Describe the available research on the effectiveness of person-centered HCBS interventions, for adults aged 60 or older with a functional limitation in home and community-based settings.

a. What HCBS interventions have been studied in relation to person-centered approaches?

1. For which person-centered HCBS interventions are systematic reviews available?

2. For which person-centered HCBS interventions are sufficient primary research studies available to justify a new systematic review?

b. What populations have been studied with person-centered HCBS interventions?

c. What primary outcomes of person-centered HCBS interventions have been studied?

d. What mediating factors have been identified in the literature that could affect outcomes such as the presence of unpaid family caregivers as part of the overall care team?

e. What study designs have been used to evaluate the effectiveness of person-centered approaches to HCBS interventions?

2. What quality measures related to person-centered HCBS interventions exist or are under development (See NCQA measures of person-centered outcomes (*https://www.ncqa.org/hedis/reports-and-research/pco-measures/*) under development, including the University of Minnesota's efforts (*https://acl.gov/sites/default/files/news%202022-11/ACL%20HCBS%20Outcome%20Measurement%20Webinar%20Slides%2005.26.22_AR%20%28002%29.pdf*))?

3. Describe the gaps that exist in the current research.

a. Which person-centered HCBS interventions identified by experts as currently relevant have no or inadequate evidence?

b. Which patient populations and outcome measures have no or inadequate evidence?

c. Are there gaps in evidence related to taking person-centered planning approaches to these interventions?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Settings)

PICOTS elements	Inclusion criteria	Exclusion criteria
Population	• Adults aged 60 years or older with a functional limitation, requiring assistance with activities of daily living, regardless of payer source.	• Animals. • Children. • Adults without disabilities. • Adults aged <60 years, exclusively.
Interventions	Person-centered HCBS, including the following person-centered approach, used alone or in combination: • Occupational, speech, and physical therapy. • Durable medical equipment. • Case management (in home or via phone). • Caregiver and client training (training on skills to take care of a patient at home). • Health promotion and disease prevention (training to enabling people to increase control over, and to improve, their health like cook a healthier meal, or doing stretches to maintain flexibility again to prevent falls). • Hospice care. • Senior centers and adult daycares.	• None.

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTINGS)—Continued

PICOTS elements	Inclusion criteria	Exclusion criteria
	• Congregate meal sites and home-delivered meal programs. • Personal assistance such as dressing, bathing, toileting, eating, transferring to or from a bed or chair, etc. • Transportation and access including physical access to their homes (ramps, rails, etc.) or access to places (doctor's offices, etc.) or could also be access to healthcare setting (ride to the doctor's office). • Home repairs and modifications. • Home safety assessments. • Homemaker and chore services. • Information and referral services (to clinical care or other community-based services). • Community integration services and day support. • Behavioral health services. • Financial services. • Legal services, such as help preparing a will. • Telephone reassurance.	
Comparators	• Institutional care (nursing care, long-term care) without HCBS • No HCBS while living in the home or community.	• None.
Outcomes	• Mortality • Time to nursing home placement. • Patient satisfaction. • Person-centered outcomes. • Hospitalization, rehospitalization. • Clinical outcomes (falls, disease-related outcomes). • Social isolation. • Quality of life (see NQF HCBS Quality Domains Report). • Harms of the intervention.	• None.
Timing	• All	• None.
Settings	• Home settings • Independent living. • Assisted living. • Studies conducted in the United States.	• Nursing home. • Healthcare setting.
Subgroup analysis	• Geography • Race/ethnicity. • Sex. • Comorbidities. • Social situations (community, home). • Clinical needs (includes activities of daily living as well as other needs to care for a person).	• None.
Study design	• Guiding Question 1: ○ RCTs. ○ Comparative observational studies. ○ Systematic reviews or meta-analyses. • Guiding Questions 2–3: ○ RCTs. ○ Comparative observational studies. ○ Surveys. ○ Qualitative studies. ○ Mixed-method studies. ○ Narrative reviews. ○ Systematic review or meta-analysis.	• In vitro studies. • Erratum. • Editorials. • Letters. • Case reports/series.
Publications	• Studies published in English as peer reviewed full-text articles • Studies published after Year 2000. • Studies conducted outside of the United States.	• Foreign language studies. • Conference abstracts.

Abbreviations: HCBS = Home and Community Based Services; NQF = National Quality Forum; RCT = randomized clinical trials.

Dated: September 29, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–22131 Filed 10–4–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the National Center for Chronic Disease Prevention and Health Promotion

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). NCCDPHP has realigned the Division of Adolescent and School Health from the National Center National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP).

DATES: This reorganization was approved by the Director of CDC on, September 29, 2023 and became effective, September 29, 2023.

FOR FURTHER INFORMATION CONTACT: D'Artonya Graham, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329; Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 44359–44363, dated July 12, 2023) is amended to reflect the reorganization of the National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under part C, section C–B, Organization and Functions, delete the following:

- Division of Adolescent and School Health (CKG)
- Office of the Director (CKG1)
- Program Development and Services Management (CKGB)
- Research Application and Evaluation Branch (CKGC)
- School-Based Surveillance Branch (CKGD)
- Healthy Schools Branch (CLKE)

II. Under part C, section C–B, Organization and Functions, after the Division of Population Health (CLK) insert the following organizational units:

- Division of Adolescent and School Health (CLL)
- Office of the Director (CLL1)
- Program Development and Services Management (CLLB)
- Research Application and Evaluation Branch (CLLC)
- School-Based Surveillance Branch (CLLD)

III. Under part C, section C–B, Organization and Functions, insert the following:

Division of Adolescent and School Health (CLL). (1) in cooperation with other CDC components, State, local, Territorial, Tribal agencies, and national nongovernmental organizations administers and supports strategies in school settings to address health outcomes for priority health risks and related health behaviors, including but not limited to the promotion of healthy eating, physical activity, sexual health, and tobacco-free lifestyles, among school-aged populations; (2) provides consultation, training, educational, and other technical services to assist State, Territorial, and local education and health departments, Tribal governments, national nongovernmental organizations, and other societal institutions to implement a coordinated approach to school health and evaluate policy, systems, and environmental changes and interventions to reduce priority health risks among youth and improve the health of students and school staff; (3) identifies and monitors priority health risks and related health behaviors among school-aged populations that result in obesity, smoking, physical inactivity, chronic disease, the transmission of HIV, other sexually transmitted infections, and unintended pregnancy; (4) in coordination with other CDC components, supports international, national, State, Tribal, and local school-based surveillance systems to monitor priority health risk behaviors and health outcomes among school-aged populations, along with the policies, programs, and practices schools implement to address them; (5) conducts evaluation research to expand knowledge of the determinants of priority health risk behaviors among school-aged populations and to identify effective policies and practices that schools and other societal institutions can implement to reduce priority health risks; (6) develops and disseminates guidelines and tools to help schools and other societal institutions apply research synthesis findings to reduce priority health risks among school-aged populations; (7) supports implementation and evaluation of a coordinated approach to school health and best practices in (a) health education, (b) physical education and other physical activity programs, (c) nutrition services, (d) school health services, (e) school counseling, psychological, and social services, (f) health promotion for staff, (g) family and community involvement, and (h) school health and safety policies and environment; (8) provides information to the scientific community and the general public through publications and presentations; (9) in accomplishing the functions listed above, collaborates with (a) other components of CDC and HHS, (b) the U.S. Department of Education, U.S. Department of Agriculture, and other Federal agencies, (c) national professional, voluntary, and philanthropic organizations, (d) international agencies, (e) and other societal institutions and organizations, as appropriate; and (10) assists other nations in reducing chronic disease-related health risks among school-aged populations in implementing and improving school health programs.

Office of the Director (CLL1). (1) plans, directs, and evaluates the activities of the division; (2) provides national leadership and guidance in policy formulation and program planning and development to reduce health risks among school-aged populations and improve school health programs, policies, and practices; (3) provides leadership and guidance for program management and operations; (4) provides leadership in coordinating activities between the division and other NCCDPHP divisions in addressing priority health risks among school-aged populations; (5) provides leadership in coordinating school-based activities throughout CDC, including with the National Center for HIV, Viral Hepatitis, STD, and TB Prevention, National Center for Injury Prevention and Control, and National Center on Birth Defects and Developmental Disabilities; (6) maintains a strong focus on school-aged populations' health risks and health-related behaviors, including sexual risk-taking and teen pregnancy; (7) promotes collaboration with other governmental and nongovernmental organizations for the development of policies and evaluation methods; (8) coordinates division responses to inquiries from national and local communications media; (9) implements science and evidence-based communication programs, initiatives, and strategies that target State and local health and education partners, media, national organizations, and consumers; (10) systematically translates, promotes, and disseminates science-based messages through multiple communication products and channels; (11) implements effective internal communication strategies targeting the division and other CDC staff; (12) oversees creation, production, promotion, and dissemination of materials designed for use by the media, partners, national organizations, and consumers, including press releases, brochures, fact sheets, toolkits, other print and electronic materials, and ensures appropriate clearance of these materials; (13) assists in the preparation of speeches and congressional testimony for the division director, the center director, and other public health officials; (14) provides program services support in extramural programs

management; and (15) collaborates, as appropriate, with other Federal agencies in carrying out these activities.

Program Development and Services Branch (CLLB). (1) provides consultation, training, educational, and other technical services to assist State, Territorial, and local education and health departments, Tribal governments, national nongovernmental organizations, and other societal institutions to implement and improve policy, systems, and environmental changes and interventions to reduce priority health risks among the school-aged population and improve the health of students and school staff; (2) uses the results of surveillance and evaluation research and research syntheses to improve the impact of school- and community-based interventions designed to reduce priority health risks among school-aged populations to promote changes in behaviors such as obesity, smoking, physical inactivity, chronic disease, the transmission of HIV, other sexually transmitted infections, and unintended pregnancy; (3) provides leadership to the nationwide network of leaders in school health to promote linkages between State and local public health departments with education agencies; (4) assesses training and technical assistance needs and develops strategies to build the capacity of funded partners, other external partners, and division staff; (5) strengthens efforts of national, State, and local programs to provide high quality professional development services to support school-based chronic disease prevention policies, programs, and practices; and (6) provides consultation to other divisions within NCCDPHP and CDC on how schools work and how to foster effective collaboration between public health and education departments.

Research Application and Evaluation Branch (CLLC). (1) conducts evaluation research to expand knowledge of the determinants of priority health risk behaviors among school-aged populations and to identify effective policies, systems, environmental changes, interventions and practices that schools and other societal institutions can implement to reduce priority health risks; (2) synthesizes and disseminates research findings to improve the impact of interventions designed to reduce priority sexual health risks among school-aged populations, including those designed to address cross-cutting issues and protective factors; (3) synthesizes and translates scientific research to develop and disseminate guidance, tools, and resources to help schools and other societal institutions apply research synthesis findings to reduce priority health risks; and (4) in collaboration with other NCCDPHP divisions and with other governmental and nongovernmental organizations, develops and promotes evidence-based policies, practices, and evaluation methods.

School-Based Surveillance Branch (CLLD). (1) maintains international, national, State, Tribal, and local school-based surveillance systems to identify and monitor priority health risk behaviors and health outcomes; (2) maintains and supports national, State, Tribal, and local surveillance systems to monitor health risk behaviors among school-aged populations along with the school health policies, programs, and practices designed to address priority health risk behaviors and health outcomes; (3) designs, develops, and disseminates a wide variety of products describing school-based surveillance data; (4) provides national leadership and comprehensive technical assistance to State and local education and health agencies, Tribal governments, and ministries of health and education in the planning and implementation of school-based surveillance systems; (5) manages extramural funding of school-based surveillance systems; and (6) collaborates with other branches, divisions, and offices in NCCDPHP and other components throughout CDC to accomplish the functions listed above.

IV. Under part C, section C–B, Organization and Functions, retitle the following organizational components:

- Strategic Business Initiatives (CAJT) to the Office of Strategic Business Initiatives (CAJT) within the Office of the Chief Operating Officer
- Office of the Deputy Director of Management and Operations (CAK13) to the Office of the Deputy Director for Management and Operations (CAK13) within the Office of Public Health Data, Surveillance, and Technology
- Management and Operations Office (CAK133) to the Office of Management and Operations (CAK133) within the Office of Public Health Data, Surveillance, and Technology

V. Under part C, section C–B, Organization and Functions, delete the respective mission or functional statements for and replace with the following:

Office of the Director (CAKC1). (5) ensures the OPHDST strategy is executed in the Investigate and Respond Division and aligned with overall CDC and the Public Health Data Strategy goals; (9) identifies dependencies and coordinates synergies between Investigate and Respond Division and OPHDST offices and divisions.

Office of the Director (CAKD1). (9) identifies dependencies and coordinates synergies between Inform and Disseminate Division, OPHDST offices and divisions, and other CDC programs.

Data Standards Branch (CAKEB). (5) collaborates with the Technology Strategy Office to develop and adopt interoperability standards for systems and health information technology functional services.

Office of the Director (CAKG1). (8) identifies dependencies and coordinates synergies between the Platforms Division and OPHDST offices and divisions; (9) ensures communications are aligned within OPHDST/OD and shared across the Platforms Division.

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101.)

Robin Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–22160 Filed 10–4–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; ORR–3 and ORR–4 Report Forms for the Unaccompanied Refugee Minors Program (OMB #0970–0034)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR) is requesting a 3-year extension of the ORR–3 and ORR–4 Report Forms (OMB #: 0970–0034, expiration 02/29/2024). There are very minimal changes requested to the report forms; ORR proposes minor revisions to the form instructions to improve clarity in certain sections and provide additional guidance for providers on how to assess youth functioning.

DATES: *Comments due within 30 days of publication.* OMB must make a decision

about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR–3 Report is submitted within 30 days of the minor's initial placement in the state, within 60 days of a reportable change in the minor's case (*e.g.,* change in legal responsibility, change in foster home placement, change in immigration data), and within 60 days of termination from the program. The ORR–4 Report is submitted every 12 months beginning on the first anniversary of the initial placement date, to record outcomes of the minor's progress.

Respondents: Unaccompanied Refugee Minors (URM) State Agencies, URM Provider Agencies, and youth participants.

URM STATE AGENCIES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR–3 URM Placement Report	15	432	0.25	1,620	540
ORR–4 URM Outcomes Report	15	282	0.50	2,115	705

Estimated Total Annual Burden Hours (URM State Agencies): 1,245.

URM PROVIDER AGENCIES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR–3 URM Placement Report	24	270	0.50	3,240	1,080
ORR–4 URM Outcomes Report	24	162	1.0	3,888	1,296

Estimated Total Annual Burden Hours (URM Provider Agencies): 2,376.

YOUTH PARTICIPANTS

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR–4 URM Outcomes Report	1032	3	0.50	1,548	516

Estimated Total Annual Burden Hours (Youth Participants): 516.

Total Estimated Annual Burden Hours: 4,137.

Authority: 8 U.S.C. 1522(d).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–22156 Filed 10–4–23; 8:45 am]

BILLING CODE 4184–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited Office of Management and Budget Review and Public Comment: Office of Human Services Emergency Preparedness and Response Disaster Human Services Case Management Intake Assessment, Resource Referral, and Case Management Plan

AGENCY: Office of Human Services Emergency Preparedness and Response, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for Public Comments.

SUMMARY: The Office of Human Services Emergency Preparedness and Response (OHSEPR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting expedited review of an information collection request from the Office of Management and Budget (OMB) and inviting public comments on the proposed collection. OHSEPR's Disaster Human Services Intake Assessment, Resource Referral, and Case Management Plan collection is part of a system of tools that OHSEPR utilizes to

support disaster survivors during response missions. ACF is requesting immediate approval for this information collection but also requesting comments to inform any updates prior to requesting an extension of approval within six months.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, ACF is soliciting public comment on the specific aspects of the information collection described in this notice. These comments will be considered prior to requesting an extension of approval.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be submitted by emailing *infocollection@acf.hhs.gov.* Identify all by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OHSEPR's case managers would use this collection during an intake assessment to identify a disaster survivor's unmet needs and to work with the survivor to develop a case management plan based on the survivor's responses. ACF is requesting that OMB grant a 180-day approval for this request under procedures for expedited processing, as authorized under 44 U.S.C. 3507 (subsection j). The information collected is essential to the mission of the agency and an unanticipated event occurred that could reasonably result in public harm if normal PRA clearance procedures are followed. ACF is requesting expedited processing to ensure that the agency is operationally ready to support disaster survivors in Hawai'i who were impacted by the wildfires that began August 8, 2023, on Maui County. A request for review under normal procedures will be submitted within 180 days of the approval for this request.

Respondents: Disaster Survivors.

ANNUAL BURDEN ESTIMATES

Data collection	Annual number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
Disaster Human Services Case Management Intake Assessment—Survivor	9,000	1	1.5	13,500
Case Management Plan—Case Manager	180	50	1	9,000
Resource Referral Form—Case Manager	180	50	1	9,000
Case Record Notes—Case Manager	180	50	1	9,000
Survivor Satisfaction Survey—Survivor	9,000	1	.25	2,250
Estimated Total Annual Burden Hours				42,750

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication. Comments will be considered and any necessary updates to materials made prior to, and responses provided in, the submission to OMB that will follow this public comment period.

Authority: The Disaster Human Services Case Management Program is authorized through appropriations language under the Children and Families Services account. It is operated by the ACF Office of Human Services Emergency Preparedness and Response, which is the lead in HHS for human service preparation for, response to, and recovery from, natural disasters.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–22294 Filed 10–4–23; 8:45 am]

BILLING CODE 4184–PC–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4182]

Revocation of Eleven Authorizations of Emergency Use of In Vitro Diagnostic Device for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Luminostics, Inc., for the Clip COVID Rapid Antigen Test; NeuMoDx Molecular, Inc., a QIAGEN Company, for the NeuMoDx Flu A–B/RSV/SARS–CoV–2 Vantage Assay; LGC, Biosearch Technologies for the SARS–CoV–2 Real-Time and End-Point RT–PCR Test; LGC, Biosearch Technologies, for the Biosearch Technologies SARS–CoV–2 ultra-high-throughput End-Point RT–PCR Test; Becton, Dickinson and Co. for the BD Veritor At-Home COVID–19 Test; Verily Life Sciences for the Verily COVID–19 RT–PCR Test; Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)–PCR Diagnostic Assay (Version 3); Xtrava Health for the SPERA COVID–19 Ag Test; Exact Sciences Laboratories for the COVID–Flu Multiplex Assay; Exact Sciences Laboratories for the SARS–CoV–2 (N gene detection) Test; and dba SpectronRx for the Hymon SARS–CoV–2 Test Kit. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as requested by the Authorization holders. The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorization for the Luminostics, Inc.'s, Clip COVID Rapid Antigen Test is revoked as of May 5, 2023. The Authorization for the NeuMoDx Molecular, Inc., a QIAGEN Company, for the NeuMoDx Flu A–B/RSV/SARS–CoV–2 Vantage Assay is revoked as of May 24, 2023. The Authorization for the LGC, Biosearch Technologies for the SARS–CoV–2 Real-

Time and End-Point RT–PCR Test is revoked as of June 1, 2023. The Authorization for the LGC, Biosearch Technologies, for the Biosearch Technologies SARS–CoV–2 ultra-high-throughput End-Point RT–PCR Test is revoked as of June 1, 2023. The Authorization for the Becton, Dickinson and Co.'s BD Veritor At-Home COVID–19 Test is revoked as of June 15, 2023. The Authorization for the Verily Life Sciences' Verily COVID–19 RT–PCR Test is revoked as of June 21, 2023. The Authorization for the Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3) is revoked as of July 3, 2023. The Authorization for the Xtrava Health's SPERA COVID–19 Ag Test is revoked as of August 3, 2023. The Authorization for the Exact Sciences Laboratories' COVID–Flu Multiplex Assay is revoked as of August 18, 2023. The Authorization for the Exact Sciences Laboratories' SARS–CoV–2 (N gene detection) Test is revoked as of August 18, 2023. The Authorization for the dba SpectronRx's Hymon SARS–CoV–2 Test Kit is revoked as of August 23, 2023.

ADDRESSES: Submit a written request for a single copy of the revocations to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On December 7, 2020, FDA issued the Authorization to Luminostics, Inc., for the for the Clip COVID Rapid Antigen Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21749), as required by section 564(h)(1) of the FD&C Act. On March 25, 2021, FDA issued the Authorization to NeuMoDx Molecular, Inc., a QIAGEN Company, for the NeuMoDx Flu A–B/RSV/SARS–CoV–2 Vantage Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on July 23, 2021 (86 FR 39040), as required by section 564(h)(1) of the FD&C Act. On April 15, 2021, FDA issued the Authorization to LGC, Biosearch Technologies for the SARS–CoV–2 Real-Time and End-Point RT–PCR Test. Notice of the issuance of this Authorization was published in the **Federal Register** on July 23, 2021 (86 FR 39040), subject to the terms of the Authorization. On August 24, 2021, FDA issued the Authorization to Becton, Dickinson and Co. for the BD Veritor At-Home COVID–19 Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on October 28, 2021 (86 FR 59740), as required by section 564(h)(1) of the FD&C Act. On April 26, 2022, FDA issued the Authorization to LGC, Biosearch Technologies, for the Biosearch Technologies SARS–CoV–2 ultra-high-throughput End-Point RT–PCR Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on July 22, 2022 (87 FR 43877), as required by section 564(h)(1) of the FD&C Act. On September 8, 2020, FDA issued the Authorization to Verily Life Sciences for the Verily COVID–19 RT–PCR Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On March 5, 2021, FDA issued the Authorization to Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard for the CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3), subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on July 23, 2021 (86 FR 39040), as required by section 564(h)(1) of the FD&C Act. On October 12, 2021, FDA issued the Authorization to Xtrava Health for the SPERA COVID–19 Ag Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on March 22, 2022 (87 FR 16198), as required by section 564(h)(1) of the FD&C Act. On July 1, 2021, FDA issued the Authorization to Exact Sciences Laboratories for the COVID–Flu Multiplex Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on October 28, 2021 (86 FR 59740), as required by section 564(h)(1) of the FD&C Act. On March 31, 2020, FDA issued the Authorization to Exact Sciences Laboratories for the SARS–CoV–2 (N gene detection) Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On May 22, 2020, FDA issued the Authorization to dba SpectronRx for the Hymon SARS–CoV–2 Test Kit, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act.

Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. Authorization Revocation Requests

In a request received by FDA on May 2, 2023, Luminostics, Inc. requested the withdrawal of, and on May 5, 2023, FDA revoked, the Authorization for the Luminostics, Inc.'s Clip COVID Rapid Antigen Test. Because Luminostics, Inc. notified FDA that there are no viable Clip COVID Rapid Antigen Test reagents remaining in distribution in the United States and requested FDA withdraw the Luminostics, Inc.'s Clip COVID Rapid Antigen Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on May 11, 2023, NeuMoDx Molecular, Inc., a QIAGEN Company requested revocation

of, and on May 24, 2023, FDA revoked, the Authorization for the NeuMoDx Molecular, Inc., a QIAGEN Company's, NeuMoDx Flu A–B/RSV/SARS–CoV–2 Vantage Assay. Because NeuMoDx Molecular, Inc., a QIAGEN Company, notified FDA that it has decided to discontinue distribution of the NeuMoDx Flu A–B/RSV/SARS–CoV–2 Vantage Assay in the United States and requested FDA voluntary revocation of the EUA for the NeuMoDx Flu A–B/RSV/SARS–CoV–2 Vantage Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on May 1, 2023, LGC, Biosearch Technologies requested revocation of, and on June 1, 2023, FDA revoked, the Authorization for the LGC Biosearch Technologies' SARS–CoV–2 Real-Time and End-Point RT–PCR Test. Because LGC, Biosearch Technologies notified FDA that it is no longer marketing the SARS–CoV–2 Real-Time and End-Point RT–PCR Test and requested FDA revoke the EUA for the LGC Biosearch Technologies SARS–CoV–2 Real-Time and End-Point RT–PCR Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on May 1, 2023, LGC, Biosearch Technologies requested revocation of, and on June 1, 2023, FDA revoked, the Authorization for the LGC Biosearch Technologies' SARS–CoV–2 ultra-high-throughput End-Point RT–PCR Test. Because LGC, Biosearch Technologies notified FDA that it is no longer marketing the SARS–CoV–2 ultra-high-throughput End-Point RT–PCR Test and requested FDA revoke the EUA for the LGC Biosearch Technologies SARS–CoV–2 ultra-high-throughput End-Point RT–PCR Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on May 30, 2023, Becton, Dickinson and Co. requested withdrawal of, and on June 15, 2023, FDA revoked, the Authorization for the Becton, Dickinson and Co.'s BD Veritor At-Home COVID–19 Test. Because Becton, Dickinson and Co. notified FDA that it has discontinued the sale of BD Veritor At-Home COVID–19 Test and requested FDA withdraw the EUA for the Becton, Dickinson and Co.'s BD Veritor At-Home COVID–19 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on June 13, 2023, Verily Life Sciences requested withdrawal of, and on June 21, 2023, FDA revoked, the Authorization for the Verily Life Sciences' Verily COVID–19 RT–PCR Test. Because Verily Life Sciences notified FDA that it is no longer distributing the Verily COVID–19 Nasal Swab Kits (authorized as part of the Verily COVID–19 RT–PCR Test) or offering testing services at the Verily Life Sciences' laboratory using the Verily COVID–19 RT–PCR Test and requested FDA withdraw the EUA for the Verily Life Sciences' Verily COVID–19 RT–PCR Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on June 14, 2023, Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard, requested voluntary revocation of, and on July 3, 2023, FDA revoked, the Authorization for the CRSP, LLC at the Broad Institute of MIT and Harvard's CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)–PCR Diagnostic Assay (Version 3). Because CRSP, LLC at the Broad Institute of MIT and Harvard notified FDA that it is no longer distributing the CRSP Self-swab Kits (authorized as part of the CRSP SARS–CoV–2 Real-time RT–PCR Diagnostic Assay (Version 3)) or offering testing services at the CRSP, LLC at the Broad Institute of MIT and Harvard laboratory using the CRSP SARS–CoV–2 Real-time RT–PCR Diagnostic Assay (Version 3), and requested FDA revoke the EUA for the CRSP, LLC at the Broad Institute of MIT and Harvard's CRSP SARS–CoV–2 Real-time RT–PCR Diagnostic Assay (Version 3), FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on July 18, 2023, Xtrava Health requested the withdrawal of, and on August 3, 2023, FDA revoked, the Authorization for the Xtrava Health's SPERA COVID–19 Ag Test. Because Xtrava Health notified FDA that there are no SPERA COVID–19 Ag Test reagents in distribution in the United States and requested FDA withdraw the Xtrava Health's, SPERA COVID–19 Ag Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on August 1, 2023, Exact Sciences Laboratories requested the withdrawal of, and on August 18, 2023, FDA revoked, the Authorization for the Exact Sciences Laboratories' COVID-Flu Multiplex Assay. Because Exact Sciences Laboratories notified FDA that they have discontinued use of the COVID-Flu Multiplex Assay at Exact Sciences Laboratories and requested FDA withdraw the Exact Sciences Laboratories' COVID-Flu Multiplex Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on August 1, 2023, Exact Sciences Laboratories requested the withdrawal of, and on August 18, 2023, FDA revoked, the Authorization for the Exact Sciences Laboratories' SARS–CoV–2 (N gene detection) Test. Because Exact Sciences Laboratories notified FDA that they have discontinued use of the SARS–CoV–2 (N gene detection) Test at Exact Sciences Laboratories and requested FDA withdraw the Exact Sciences Laboratories' SARS–CoV–2 (N gene detection) Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on March 24, 2023, dba SpectronRx requested the withdrawal of, and on August 23, 2023, FDA revoked, the Authorization for the dba SpectronRx's Hymon SARS–CoV–2 Test Kit. Because dba SpectronRx notified FDA that they are discontinuing the distribution of the Hymon SARS–CoV–2 Test Kit and requested FDA withdraw the dba SpectronRx for the Hymon SARS–CoV–2 Test Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/.*

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA of Luminostics, Inc.'s, Clip COVID Rapid Antigen Test, NeuMoDx Molecular, Inc., a QIAGEN Company's, NeuMoDx Flu A–B/RSV/SARS–CoV–2 Vantage Assay, LGC Biosearch Technologies' SARS–CoV–2 Real-Time and End-Point RT–PCR Test, LGC Biosearch Technologies' SARS–CoV–2 ultra-high-throughput End-Point RT–PCR Test, Becton, Dickinson and Co.'s BD Veritor At-Home COVID–19 Test, Verily Life Sciences' Verily COVID–19 RT–PCR Test, Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard's CRSP SARS–CoV–2 Real-time Reverse Transcriptase (RT)–PCR Diagnostic Assay (Version 3), Xtrava Health's SPERA COVID–19 Ag Test, Exact Sciences Laboratories' COVID-Flu Multiplex Assay, Exact Sciences

Laboratories' SARS–CoV–2 (N gene detection) Test, and dba SpectronRx's Hymon SARS–CoV–2 Test Kit. These revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

May 5, 2023

Bala Raja Ph.D.
President and CEO
Luminostics, Inc.
48389 Fremont Blvd, Suite 112,
Fremont, CA, 94538

Re: Revocation of EUA202907

Dear Dr. Raja:

This letter is in response to the request from Luminostics, Inc., in a letter received May 2, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the Clip COVID Rapid Antigen Test issued on December 7, 2020, reissued March 4, 2022, and revised on September 23, 2021, and November 1, 2022. FDA understands that as of the date of this letter there are no viable Clip COVID Rapid Antigen Test reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Luminostics, Inc. has requested FDA withdraw the EUA for the Clip COVID Rapid Antigen Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202907 for the Clip COVID Rapid Antigen Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Clip COVID Rapid Antigen Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

May 24, 2023

Eveline Arnold, Ph.D.
Director, Regulatory Affairs
Clinical, Medical, and Regulatory Affairs (CMRA)
NeuMoDx Molecular, Inc., a QIAGEN Company
1250 Eisenhower Place
Ann Arbor, MI 48108

Re: Revocation of EUA202947

Dear Dr. Arnold:

This letter is in response to QIAGEN's request on behalf of NeuMoDx Molecular, Inc., a QIAGEN Company, in an email received May 11, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the NeuMoDx Flu A-B/RSV/SARS-CoV-2 Vantage Assay issued on March 25, 2021, and revised on September 23, 2021. QIAGEN has decided to discontinue distribution of the NeuMoDx Flu A-B/RSV/SARS-CoV-2 Vantage Assay in the United States and requested voluntary revocation of the EUA.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because QIAGEN, on behalf of NeuMoDx Molecular, Inc., has requested FDA revoke the EUA for the NeuMoDx Flu A-B/RSV/SARS-CoV-2 Vantage Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202947 for the NeuMoDx Flu A-B/RSV/SARS-CoV-2 Vantage Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the NeuMoDx Flu A-B/RSV/SARS-CoV-2 Vantage Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

June 1, 2023

Ray Bandziulis, Ph.D.
Director of Regulatory Affairs
LGC, Biosearch Technologies
2905 Parameter Street
Middleton, WI 53562

Re: Revocation of EUA203030

Dear Dr. Bandziulis:

This letter is in response to the request from LGC, Biosearch Technologies, in an email received May 1, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Biosearch Technologies SARS-CoV-2 Real-Time and End-Point RT-PCR Test issued on April 15, 2021, and revised on September 23, 2021 and May 3, 2022. LGC, Biosearch Technologies indicated that they are no longer marketing the authorized product and requested that the EUA be revoked. FDA understands that, as of the date of this letter, there are no viable Biosearch Technologies SARS-CoV-2 Real-Time and End-Point RT-PCR Test reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because LGC, Biosearch Technologies has requested that FDA revoke the EUA for Biosearch Technologies SARS-CoV-2 Real-Time and End-Point RT-PCR Test, FDA has determined that it is appropriate, to protect the public health or safety, to revoke this authorization. Accordingly, FDA hereby revokes EUA203030 for the Biosearch Technologies SARS-CoV-2 Real-Time and End-Point RT-PCR Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Biosearch Technologies SARS-CoV-2 Real-Time and End-Point RT-PCR Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

June 1, 2023

Ray Bandziulis, Ph.D.
Director of Regulatory Affairs
LGC, Biosearch Technologies
2905 Parameter Street
Middleton, WI 53562

Re: Revocation of EUA210561

Dear Dr. Bandziulis:

This letter is in response to the request from LGC, Biosearch Technologies, in an email received May 1, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Biosearch Technologies SARS-CoV-2 ultra-high-throughput End-Point RT-PCR Test issued on April 26, 2022. LGC, Biosearch Technologies indicated that they are no longer marketing the authorized product and requested that the EUA be revoked. FDA understands that as of the date of this letter customers will discontinue use of the Biosearch Technologies SARS-CoV-2 ultra-high-throughput End-Point RT-PCR Test reagents.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because LGC, Biosearch Technologies has requested FDA revoke the EUA for Biosearch Technologies SARS-CoV-2 ultra-high-throughput End-Point RT-PCR Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210561 for the Biosearch Technologies SARS-CoV-2 ultra-high-throughput End-Point RT-PCR Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Biosearch Technologies SARS-CoV-2 ultra-high-throughput End-Point RT-PCR Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

June 15, 2023

Amanda Ker,
Regulatory Specialist
Becton, Dickinson and Co.
7 Loveton Circle
Sparks, MD 21152

Re: Revocation of EUA210417

Dear Amanda Ker:

This letter is in response to the request from Becton, Dickinson and Co ("BD"), in an email received May 30, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the BD Veritor At-Home COVID-19 Test issued on August 24, 2021, reissued on November 22, 2021 and revised on August 4, 2022, November 1, 2022 and February 21, 2023. BD indicated that they discontinued the sale the authorized product and requested that the EUA be withdrawn. FDA understands that as of the date of this letter there are no viable BD Veritor At-Home COVID-19 Test reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because BD has requested FDA withdraw the EUA for the BD Veritor At-Home COVID-19 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210417 for the BD Veritor At-Home COVID-19 Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the BD Veritor At-Home COVID-19 Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

June 21, 2023

Aarthi Srinivasan
Regulatory Affairs
Verily Life Sciences
269 E Grand Ave.
South San Francisco, CA 94080

Re: Revocation of EUA202054

Dear Aarthi Srinivasan:

This letter is in response to the request from Verily Life Sciences, in an email received June 13, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the Verily COVID-19 RT-PCR Test issued on September 8, 2020, reissued on December 18, 2020, March 30, 2021, and November 8, 2021, and revised on September 23, 2021 and November 15, 2022. Verily Life Sciences indicated that they are no longer distributing the Verily COVID-19 Nasal Swab Kits (authorized as part of the Verily COVID-19 RT-PCR Test) or offering testing services at the Verily Life Sciences laboratory using the Verily COVID-19 RT-PCR Test and requested that the EUA be withdrawn.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Verily Life Sciences has requested FDA withdraw the EUA for the Verily COVID-19 RT-PCR Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202054 for the Verily COVID-19 RT-PCR Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Verily COVID-19 RT-PCR Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

July 3, 2023

Charles Kolifrath
Associate Director, Regulatory Affairs, Genomics Platform
Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard
320 Charles Street
Cambridge, MA 02141

Re: Revocation of EUA210089

Dear Charles Kolifrath:

This letter is in response to the request from Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard, in an email received June 14, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3) issued on March 5, 2021, reissued on May 13, 2021, and June 3, 2022, and revised on September 23, 2021. In addition, on June 15, 2021, FDA included the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3) under Exhibit 1 of the April 20, 2021, pooling and serial testing amendment. Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard indicated that as of the date of this letter they are no longer distributing the CRSP Self-swab Kits (authorized as part of the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3)) or offering testing services at the Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard laboratory using the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3) and requested voluntary revocation of the EUA.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Clinical Research Sequencing Platform (CRSP), LLC at the Broad Institute of MIT and Harvard has requested voluntary revocation of the EUA for the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3), FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210089 for the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3), pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the CRSP SARS-CoV-2 Real-time Reverse Transcriptase (RT)-PCR Diagnostic Assay (Version 3) is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

August 3, 2023

Iman Sadreddin
Co-Founder, COO
Xtrava Health
3080 Olcott Street, Suite C201
Santa Clara, CA 95054

Re: Revocation of EUA210544

Dear Mr. Iman Sadreddin:

This letter is in response to the request from Xtrava Health, in an email received July 18, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the SPERA COVID-19 Ag Test issued on October 12, 2021, revised on November 1, 2022, and reissued May 22, 2023. FDA understands that as of the date of this letter there are no SPERA COVID-19 Ag Test reagents in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Xtrava Health has requested that FDA withdraw the EUA for the SPERA COVID-19 Ag Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210544 for the SPERA COVID-19 Ag Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the SPERA COVID-19 Ag Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

_____
Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

August 18, 2023

Thiago Braga
Sr. Regulatory Affairs Specialist
Exact Sciences Laboratories
650 Forward Drive
Madison, WI 53711
Re: Revocation of EUA203022

Dear Thiago Braga:

This letter is in response to the request from Exact Sciences Laboratories, in a letter received via email August 1, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the COVID-Flu Multiplex Assay issued on July 1, 2021, and revised on September 23, 2021, February 14, 2022, and August 2, 2022. Exact Sciences Laboratories indicated that they have discontinued use of the COVID-Flu Multiplex Assay at Exact Sciences Laboratories, located at 650 Forward Drive, Madison, WI 53711, and requested that the EUA be withdrawn.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Exact Sciences Laboratories has requested FDA withdraw the EUA for the COVID-Flu Multiplex Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA203022 for the COVID-Flu Multiplex Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the COVID-Flu Multiplex Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Ellen J. Flannery, J.D.
Deputy Center Director for Policy
Director, Office of Policy
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

August 18, 2023

Thiago Braga
Sr. Regulatory Affairs Specialist
Exact Sciences Laboratories
650 Forward Drive
Madison, WI 53711
Re: Revocation of EUA200367

Dear Thiago Braga:

This letter is in response to the request from Exact Sciences Laboratories, in a letter received via email August 1, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the SARS-CoV-2 (N gene detection) Test that was originally authorized under the March 31, 2020, Emergency Use Authorization (EUA) for Molecular-based Laboratory Developed Tests for Detection of Nucleic Acid from SARS-CoV-2 (High Complexity LDT Umbrella EUA) on May 22, 2020, and then issued an individual EUA on August 3, 2020, that was revised on August 28, 2020, and September 23, 2021. Exact Sciences Laboratories indicated that they have discontinued use of the SARS-CoV-2 (N gene detection) Test at Exact Sciences Laboratories, located at 650 Forward Drive, Madison, WI 53711 and 145 E. Badger Road Ste. 100, Madison, WI 53713, and requested that the EUA be withdrawn.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)© of the Act). Because Exact Sciences Laboratories has requested FDA withdraw the EUA for the SARS-CoV-2 (N gene detection) Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200367 for the SARS-CoV-2 (N gene detection) Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the SARS-CoV-2 (N gene detection) Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Ellen J. Flannery, J.D.
Deputy Center Director for Policy
Director, Office of Policy
Center for Devices and Radiological Health
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

August 23, 2023

Beth Kraemer, RPh
Director of Quality, Regulatory & Technical Compliance
dba SpectronRx
9550 Zionsville Rd Suite 1
Indianapolis, IN 46268

Re: Revocation of EUA200415

Dear Beth Kraemer:

This letter is in response to the request from dba SpectronRx, received via email on March 24, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Hymon SARS-CoV-2 Test Kit issued on May 22, 2020, and amended on August 11, 2020. dba SpectronRx indicated that they are discontinuing the distribution of the Hymon SARS-CoV-2 Test Kit and requested that the EUA be revoked. FDA understands that as of the date of this letter there will no longer be any viable Hymon SARS-CoV-2 Test Kit reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because dba SpectronRx has requested that FDA terminate the EUA for the Hymon SARS-CoV-2 Test Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200415 for the Hymon SARS-CoV-2 Test Kit, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Hymon SARS-CoV-2 Test Kit is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

Dated: October 2, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22188 Filed 10–4–23; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1848]

Stimulant Use Disorders: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Stimulant Use Disorders: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of stimulant use disorders. Specifically, this guidance addresses FDA's current recommendations regarding the overall development program and clinical trial designs for the development of drugs to support indications of treatment of moderate to

severe cocaine use disorder, treatment of moderate to severe methamphetamine use disorder, or treatment of moderate to severe prescription stimulant use disorder.

DATES: Submit either electronic or written comments on the draft guidance by December 4, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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–1848 for ''Stimulant Use Disorders: Developing Drugs for Treatment.'' 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 the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Matthew Sullivan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3126, Silver Spring, MD 20993–0002, 301–796–1245.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Stimulant Use Disorders: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of stimulant use disorders. This draft guidance is intended to serve as a focus for continued discussions among the Division of Anesthesiology, Addiction Medicine, and Pain Medicine, pharmaceutical sponsors, the academic community, and the public. This draft guidance does not address treatment of intoxication or poisoning with various stimulants or treatment of withdrawal from stimulants.

Because FDA has yet to approve any medication treatments for stimulant use disorders, this guidance reflects current recommendations based on a number of uncertainties about the best approach for treating stimulant use disorders and the best approach for evaluating response to treatment. FDA is engaged in an ongoing process to learn more about stimulant use disorders and their treatments to provide the best possible advice to sponsors.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Stimulant Use Disorders: Developing Drugs for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. 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 312 relating to the submission of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 relating to the submission of new drug applications have been approved under OMB control number

0910–0001. The collections of information in 21 CFR 201.56 and 201.57 relating to certain prescription product labeling requirements have been approved under OMB control number 0910–0572. The collections of information pertaining to expedited programs for serious conditions for drugs and biologics and breakthrough therapy-designation for drugs and biologics have been approved under OMB control number 0910–0765.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 2, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22189 Filed 10–4–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Radiological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Radiological Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on November 7, 2023, from 9 a.m. to 12:15 p.m. eastern time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Jarrod Collier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, *Jarrod.Collier@fda.hhs.gov,* 240–672–5763, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.*htm and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On November 7, 2023, the committee will discuss and make recommendations on the classification of blood irradiator devices for the prevention of metastasis, which are currently unclassified pre-amendments devices, to class III (general controls and premarket approval).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down and select the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 25, 2023. Oral presentations from the public will be scheduled on November 7, 2023, between approximately 9:20 a.m. and 10:20 a.m. eastern time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 17, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 18, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Ann Marie Williams at *Annmarie.williams@fda.hhs.gov* or 240–507–6496 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 29, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22106 Filed 10–4–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–0025

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before December 4, 2023.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041 and *PRA@HHS.GOV*.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0937–0025–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@HHS.GOV* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: U.S. Public Health Service Commissioned Corps.

Type of Collection: Extension.

OMB No. 0937–0025.

Abstract: The Commissioned Corps of the U.S. Public Health Service has a need for the information in order to assess the qualifications of each applicant and make a determination whether the applicant meets the requirements to receive a commission. The information is used to make determinations on candidates/applicants seeking appointment to the Regular Corps and Ready Reserve Corps to assess whether they are suitable for life in the uniformed services based upon a review of a variety of assessment factors including, but not limited to: personal adjustment, employment history, character, and a candidate's prior history of service in one of the uniformed services. Their potential for leadership as a commissioned officer and their ability to deal effectively with people is evaluated.

ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Form name	Number of regular corps respondents	Number of reserve corps respondents	Number response per respondent	Average burden per responses (in hours)	Total burden hours
Interested Health Professionals.	Prequalification Questionnaire.	6,000	1,000	1	10/60	1,167
Health Professionals	Form PHS–50	3,000	500	1	15/60	875
References (college professors/teachers).	Form PHS–1813	3,000	500	1	15/60	875
Health Professionals	Addendum: Commissioned Corps Personal Statement.	3,000	500	1	15/60	875
Total						3,792

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–22158 Filed 10–4–23; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; NCATS Conference Grant Reviews.

Date: November 3, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, MSC 4874, Bethesda, MD 20892, (301) 827–9549, *mooremar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 29, 2023.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22100 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Office of Research Infrastructure Programs Special Emphasis Panel; Office of Research Infrastructure Programs (ORIP) Special Emphasis Panel: Applications for Scientific Conferences.

Date: November 13, 2023.

Time: 1:00 p.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: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 29, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22119 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of 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 Environmental Health Sciences.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

The 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 Environmental Health Sciences, 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 Environmental Health Sciences ESBSC December 3–5, 2023 Meeting.

Date: December 3–5, 2023.

Closed: December 03, 2023, 7:00 p.m. to 8:00 p.m.

Agenda: Discussion of BSC Reviews.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 04, 2023, 8:30 a.m. to 10:00 a.m.

Agenda: Meeting Overview and Q & A Session.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 04, 2023, 10:15 a.m. to 11:55 a.m.

Agenda: Q & A Session.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 04, 2023, 11:55 a.m. to 12:40 p.m.

Agenda: 1:1 Sessions with Investigators.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 04, 2023, 12:40 p.m. to 1:30 p.m.

Agenda: Working Lunch.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 04, 2023, 1:35 p.m. to 3:15 p.m.

Agenda: Q & A Session.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 04, 2023, 3:30 p.m. to 4:20 p.m.

Agenda: Q & A Session.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 04, 2023, 4:25 p.m. to 5:10 p.m.

Agenda: 1:1 Sessions with Investigators.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Open: December 05, 2023, 8:30 a.m. to 10:00 a.m.

Agenda: Poster Session.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 05, 2023, 10:00 a.m. to 11:00 a.m.

Agenda: Meeting with Fellows, Staff Scientists.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 05, 2023, 11:00 a.m. to 12:30 p.m.

Agenda: Working Lunch.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 05, 2023, 12:30 p.m. to 1:20 p.m.

Agenda: Meeting with Cores/Programs; Closed BSC Discussion and Completion of Individual Review Assignments by each Member; Closed Debriefing to NIEHS/DIR Leadership.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 05, 2023, 1:30 p.m. to 3:00 p.m.

Agenda: BSC Discussion and Completion of Individual Review Assignments by each Member.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Closed: December 05, 2023, 3:15 p.m. to 4:15 p.m.

Agenda: Debriefing to NIEHS/DIR Leadership.

Place: National Institute Environmental Health Sciences (NIEHS), Rodbell Auditorium, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (Hybrid Meeting).

Contact Person: Darryl C. Zeldin, Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Sciences, NIH, 111 T.W. Alexander Drive, Mail drop MSC A2–09, Research Triangle Park, NC 27709, 919–541–1169, *zeldin@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the 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.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 29, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22118 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Kidney and Urological Sciences.

Date: November 8–9, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assays, Diagnostics, Instrumentation, and Interventions.

Date: November 8–9, 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: Aurea D. De Sousa, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, (301) 827–6829, *aurea.desousa@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member conflict: Gastroenterology.

Date: November 15, 2023.

Time: 11:00 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: Santanu Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2106, Bethesda, MD 20892, (301) 435–5947, *banerjees5@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics and Biosensors.

Date: November 16–17, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, (301) 480–9069, *cbackman@mail.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 29, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22117 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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.

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 *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, 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.

Date: December 1, 2023.

Time: 10:00 a.m. to 4:45 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 10 Center Drive, Room 10D39, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chris J. McBain, Ph.D., Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 10 Center Drive, Room 10D39, Bethesda, MD 20892, (301) 594–5984, *mcbainc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: September 29, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22098 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public by videocast as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NACBIB, January 2024.

Date: January 23, 2024.

Open: 12:00 p.m. to 2:50 p.m.

Agenda: Report from the Institute Director, Council Members and other Institute Staff.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda MD 20892.

Contact Person: Kathy Salaita, Sc.D., Acting Associate Director for Research Administration, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Bethesda, MD 20892, *kathy.salaita@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nibib.nih.gov/about-nibib/advisory-council* where an agenda and any additional information for the meeting will be posted when available.

Dated: September 29, 2023.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22113 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Emphasis Panel: Cardiovascular Differentiation and Development.

Date: November 1, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Hypersensitivity, Allergies and Mucosal Immunology (HAMI).

Date: November 2–3, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Velasco Cimica, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–1760, *velasco.cimica@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–122: Research with Activities Related to Diversity (ReWARD)—2.

Date: November 2, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Heidi B. Friedman, Ph.D., Senior Scientific Review Officer, Office of the Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 907–H, Bethesda, MD 20892, (301) 379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 20–103: Collaborative Program Grant for Multidisciplinary Teams (RM1).

Date: November 3, 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.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Social and Community Influences Across the Life Course.

Date: November 6–7, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: David E. Pollio, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1006F, Bethesda, MD 20892, (301) 594–4002, *polliode@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Shared Instrumentation: Molecular and Cellular Sciences and Technologies (S10).

Date: November 6–7, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics, and Assay Development.

Date: November 7–8, 2023.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: John Harold Laity, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8254, *laityjh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: November 7–8, 2023.

Time: 9:30 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: Simone Chebabo Weiner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011K, Bethesda, MD 20892, (301) 435–1042, *weinersc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology, Signaling and Development.

Date: November 7, 2023.

Time: 1:00 p.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: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

Date: November 8, 2023.

Time: 1:00 p.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: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–905–8294, *rahman-sesay@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Intervention Research to Improve Native American Health.

Date: November 9, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria De Jesus Diaz Perez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000G, Bethesda, MD 20892, (301) 496–4227, *diazperezm2@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 29, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22116 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel; Pathogenic Mechanisms Influencing Blood Brain Barrier Function in HIV and Substance Use Disorders.

Date: November 8, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Caitlin Moyer, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *caitlin.moyer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 29, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22097 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; Clinical Applications.

Date: November 16, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, Bethesda, MD 20817, 240–276–5864, *jennifer.schiltz@nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; Translational Research Program for Therapeutics (R61/R33).

Date: December 12, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Ashley Fortress, Ph.D., Designated Federal Official, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Bethesda, MD 20817, (301) 451–2020, *ashley.fortress@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 29, 2023.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22114 Filed 10–4–23; 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 Advisory Council, October 24, 2023, 9 a.m. to October 24, 2023, 5 p.m., National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 14, 2023, FR Doc. 2023–19906, 88 FRN 63116.

This notice is being amended to change the meeting time for National Heart, Lung, and Blood Advisory Council closed session on October 24, 2023 from 9 a.m. to 10 a.m. to 8 a.m. to 9 a.m. The meeting is partially closed to the public.

Dated: September 29, 2023.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22099 Filed 10–4–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting for the Interdepartmental Substance Use Disorders Coordinating Committee (ISUDCC)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (Secretary) announces a meeting of the Interdepartmental Substance Use Disorders Coordinating Committee (ISUDCC). The ISUDCC is open to the public and members of the public can attend the meeting via telephone or webcast only, and not in person. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.* The meeting will include reports from the ISUDCC Working Groups, and discussion of the ISUDCC's recommendations to HHS on how the Federal Government can further integrate and coordinate harm reduction approaches and strategies across the continuum of prevention, treatment, and recovery policies, programs, and practices.

DATES: December 6, 2023, 9 a.m.–12:30 p.m., ET/Open.

ADDRESSES: The meeting will be held virtually, and can be accessed via Zoom.

FOR FURTHER INFORMATION CONTACT: Tracy Goss, ISUDCC Designated Federal Officer, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857; telephone: 240–276–0759; email: *Tracy.Goss@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Committee Name: Interdepartmental Substance Use Disorders Coordinating Committee (ISUDCC).

I. Background and Authority

The Interdepartmental Substance Use Disorders Coordinating Committee is required under section 7022 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act, Pub. L. 115–271) to accomplish the following duties: (1) identify areas for improved coordination of activities, if any, related to substance use disorders, including research, services, supports, and prevention activities across all relevant Federal agencies; (2) identify and provide to the Secretary recommendations for improving Federal programs for the prevention and treatment of, and recovery from, substance use disorders, including by expanding access to prevention, treatment, and recovery services; (3) analyze substance use disorder prevention and treatment strategies in different regions of and populations in the United States and evaluate the extent to which Federal substance use disorder prevention and treatment strategies are aligned with State and local substance use disorder prevention and treatment strategies; (4) make recommendations to the Secretary regarding any appropriate changes with respect to the activities and strategies described in items (1) through (3) above; (5) make recommendations to the Secretary regarding public participation in decisions relating to substance use disorders and the process by which public feedback can be better integrated into such decisions; and (6) make recommendations to ensure that substance use disorder research, services, supports, and prevention activities of the Department of Health and Human Services and other Federal agencies are not unnecessarily duplicative.

Not later than one year after the date of the enactment of this Act, and annually thereafter for the life of the Committee, the Committee shall publish on the internet website of the Department of Health and Human Services, which may include the public information dashboard established under section 1711 of the Public Health Service Act, as added by section 7021, a report summarizing the activities carried out by the Committee pursuant to subsection (e), including any findings resulting from such activities.

II. Membership

This ISUDCC consists of Federal members listed below or their designees, and non-Federal public members.

Federal Membership: Members include, The Secretary of Health and Human Services; The Attorney General of the United States; The Secretary of Labor; The Secretary of Housing and Urban Development; The Secretary of Education; The Secretary of Veterans Affairs; The Commissioner of Social Security; The Assistant Secretary for Mental Health and Substance Use; The Director of National Drug Control Policy; representatives of other Federal agencies that support or conduct activities or programs related to substance use disorders, as determined appropriate by the Secretary.

Non-Federal Membership: Members include, 17 non-Federal public members appointed by the Secretary, representing individuals who have received treatment for a diagnosis of a substance use disorder; directors of State substance use agencies; representatives of leading research, advocacy, or service organizations for adults with substance use disorder; physicians, licensed mental health professionals, advance practice registered nurses, and physician assistants, who have experience in treating individuals with substance use disorders; substance use disorder treatment professionals who provide treatment services at a certified opioid treatment program; substance use disorder treatment professionals who have research or clinical experience in working with racial and ethnic minority populations; substance use disorder treatment professionals who have research or clinical mental health experience in working with medically underserved populations; State-certified substance use disorder peer support specialists; drug court judge or a judge with experience in adjudicating cases related to substance use disorder; public safety officers with extensive experience in interacting with adults with a substance use disorder; and individuals with experiences providing services for homeless individuals with a substance use disorder.

The ISUDCC is required to meet at least twice per calendar year.

To attend virtually, submit written or brief oral comments, or request special accommodation for persons with disabilities, contact Tracy Goss. Individuals can also register on-line at:. *https://snacregister.samhsa.gov.*

The public comment section will be scheduled at the conclusion of the meeting. Individuals interested in submitting a comment, must notify Tracy Goss on or before November 24, 2023, via email to: *Tracy.Goss@samhsa.hhs.gov.*

Up to two minutes will be allotted for each approved public comment as time permits. Written comments received in advance of the meeting will be considered for inclusion in the official record of the meeting.

Substantive meeting information and a roster of Committee members is available at the Committee's website: *https://www.samhsa.gov/about-us/advisory-councils/meetings.*

Dated: October 1, 2023.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2023–22157 Filed 10–4–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, (DHS).

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Starr County, Texas.

DATES: This determination takes effect on October 5, 2023.

SUPPLEMENTARY INFORMATION: Important missions of the Department of Homeland Security (''DHS'') include border security. Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, sec. 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, sec. 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of ''high illegal entry'' into the United States. In section 102(b) of IIRIRA, Congress called on the Secretary to construct reinforced fencing on the southwest border and provide for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of ''high illegal entry.'' As of early August 2023, Border Patrol had encountered over 245,000 such entrants attempting to enter the United States between ports of entry in the Rio Grande Valley Sector in Fiscal Year 2023.

Therefore, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will take immediate action to construct barriers and roads. Construction will be funded by a fiscal year 2019 appropriation through which Congress appropriated funds for the construction border barrier in the Rio Grande Valley, and DHS is required to use those funds for their appropriated purpose. This project is consistent with DHS's plan to fulfill the requirements of President Biden's Proclamation (Proclamation No. 10142, 86 FR 7225 (Jan. 20, 2021)), which ended the diversion of funds for border wall from military projects or other sources while calling for the expenditure of any funds Congress appropriated for barrier construction consistent with their appropriated purpose. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. Such areas are not located within any of the areas identified in section 231 of title II of division A of the Fiscal Year 2019 DHS Appropriations Act. *See* Public Law 116–6, Div. A, Title II, sec. 231.

Section 2

As set forth in section 102(a) of IIRIRA, I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of ''high illegal entry'' (the ''project areas''):

- Starting approximately one mile south of the Falcon Dam and extending southeast for approximately two miles.
- Starting at the southeast boundary of the Arroyo Morteros Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending southeast for approximately one mile.
- Starting at the northernmost boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending north for approximately one mile.
- Starting at the eastern boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending east for approximately one-half mile.
- Starting one-half mile south of the intersection of Perez Road and U.S. Highway 83 and generally following the Rio Grande River to approximately one-quarter mile south and east of the intersection of Leos Road and U.S. Highway 83.
- Starting approximately three-quarters of a mile southeast of the intersection of North Redwoods Street and U.S. Highway 83 and extending southeast to the northwest boundary of the Los Velas West Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- Starting approximately one-tenth (0.1) of a mile south of the intersection of Trophy Street and Moonbeam Street and extending east to approximately one mile south of the intersection of Los Olmitos Road and Farm to Market Road 1430.
- Starting approximately one mile south of the intersection of Los Olmitos Road and Farm to Market Road 1430 and extending southeast to the northwest boundary of the La Casita East Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- Starting approximately one mile south of the intersection of Mission Street and Old Military Highway and

extending southeast for approximately one and three-quarters miles.

• Starting at the northeast boundary of the Villareales Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending east to the western boundary of the of the Cuevitas Tract of the Lower Rio Grande Valley National Wildlife Refuge.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Public Law 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Public Law 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd-668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024, 70 Stat. 1119 (Aug. 8, 1956) (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 *et seq.*)); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); the American Indian Religious Freedom Act (42 U.S.C. 1996); and the Federal Land Policy and Management Act (Pub. L. 94–579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 *et seq.*)).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Alejandro N. Mayorkas,

Secretary. U.S. Department of Homeland Security.

[FR Doc. 2023–22176 Filed 10–4–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–22]

Privacy Act of 1974; System of Records

AGENCY: Single Family Acquired Asset Branch, Office of Housing, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Under the provision of the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Single Family Acquired Asset Branch, is modifying system of records titled ''Single Family Acquired Assets Management System (SAMS).'' The Single Family Acquired Asset Management System (SAMS) handles Management and accounting functions for HUD's inventory of HUD owned single-family properties for sale, or maintained as, Real Estate Owned (REO) properties. This system of records is being revised to make clarifying changes within: System Location, System Manager, Record Authority for Maintenance of the System, Purpose of the System, Categories of Individuals Covered by the System, Categories of Records in the System, Records Source Categories, Routine Uses of Records Maintained in the System, Retrieval of Records, and Retention and Disposal of Records, and make general updates to the remaining sections to accurately reflect management of the system of records in accordance with the Office of Management and Budget (OMB) Circular A108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.

DATES: Comments will be accepted on or before November 6, 2023. This proposed action will be effective immediately upon publication. Routine uses will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410; telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: HUD, Single Family Acquired Asset Branch, maintains the Single Family Acquired Asset Management System (SAMS). HUD is publishing this revised notice to reflect new and modified routine uses, and new source protocols implemented to support HUD's move to cloud services. Additionally, administrative updates are being added to the remaining SORN sections to reflect the system in its current state. The change to the system of records will have no undue impact on the privacy of individuals and updates are consistent with the records collected. Specific changes to the SORN include:

Security Classification: Added systems of record classification status.

System Location: Replaced former data center location in West Virginia with new locations in Virginia, Mississippi, and Washington, DC.

System Manager: Identified new system manager expected to operate under this system of records.

Authority for Maintenance of the System: Updated with existing authorities that permit the maintenance of the system's records by clarifying citations, correcting errors, and including relevant citations to the Code of **Federal Register**. Statutes and regulations are listed below.

Purpose of the System: Updated to make clarifying changes to the system's purpose.

Categories of Individuals Covered by the System: Reorganized this section to group and clarify individuals according to their program responsibilities.

Categories of Records in the System: Updated this section to clarify the records collected.

Records Source Categories: Updated with record sources for internal and external systems, with source updates to: (1) responsibility for the initial receipt/upload of HUD REO disbursements, collections and Name and Address Identification Numbers (NAIDs) information was transferred from HUD's Single Family Acquired Asset Branch—SAMS to the Office of Single Family Asset Management (OSFAM)—Asset Disposition and Management System (ADAMS). Financial transaction and documents are now submitted and created in ADAMS, and then sent to SAMS to capture and process core financial transactions, and (2) the SAMS Web cloud-based solution was implemented for uploading, transmitting, storing forms and PDF attachments for program automated reporting.

Routine Use of Records in System: HUD will make new and modified disclosures from this system of records to authorized agencies and participants as described below. The disclosures will enable HUD to resolve disputes, implement remedial actions, test new technology, work with researchers, and respond to investigation actions. To keep track of legal, reporting, hearing, and procedural processes related to these documents, HUD may maintain summaries or details on these disclosures in this system. HUD's responsiveness to records maintained by this system of records makes these disclosures appropriate.

New Routine Uses: Routine Use (1) was added to help resolve disputes between HUD and persons making FOIA requests; Routine Use (2) was added to help with congressional inquiries made at the request of that individual; Routine Use (3) was added to let researchers access HUD data as needed; Routine Use (4) was added to allow support from contractors, and others when necessary to accomplish a HUD mission function; Routine Use (6) was added to allow for disclosures made to Treasury Bureau of Fiscal Service (BFS) and others for collections and payments services; Routine Use (9) was added to allow testing new program technology and services; Routine Uses (10) and (11) were added to meet the requirements of OMB M–17–12; Routine Use (12) was added to help enforce civil or criminal laws; and Routine Uses (13) and (14) were added to let HUD to litigate as needed and receive effective representation by its representatives (such as the Department of Justice).

Updated Routine Use: Routine Use (5) was modified to clarify the purpose for reporting 1099 miscellaneous form to Treasury IRS, and (7) was modified to clarify disclosures made to the relevant REO entity, and purposes for reporting accounting transactions and tax compliance requirements.

Records Retention and Disposition: Updated this section to describe current retention and disposal requirements in a simplified format. Added existing NARA approved general records schedules the agency generally uses to dispose of program related records.

Policy and Practice for Retrieval of Records: Updated to include minor changes and format. Removed the FHA Case Number since it was not a personal identifier, and the property address, purchaser name since these records were not used as a retrieval practice.

SYSTEM NAME AND NUMBER:

Single Family Acquired Asset Management System HUD/HOU–01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Center for Critical Information Processing and Storage in Mississippi and Virgina; HUD Headquarters, 451 Seventh Street SW, Washington, DC 20410–0001; Accounting files are located at the management and marketing contractors' site, which fall under the HUD's REO Servicing Office, Office of Single Family Asset Management, at various locations throughout the United States.

SYSTEM MANAGER(S):

Kirk Mensah, Director, Single Family Assets Management Division, 451 Seventh Street SW, Room 6242, Washington, DC 20410, telephone number (202) 402–3092.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Housing Act, Public Law 73–479, 48 Stat. 1246, 12 U.S.C. 1701 *et seq.,* Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Public Law 104–204, 110 Stat. 2894, 12 U.S.C. 1715z–11a, The Housing and Community Development Act of 1987, Public Law 100–242, title I, § 165, 101 Stat. 1864, The Housing Community Development Act of 1987, 42 U.S.C. 3543(a), The Debt Collection Act of 1982, Public Law 97–365, title 24 Code of Federal Regulations, part 291, Disposition of HUD-Acquired and Owned Single-Family Property, HUD Handbook 4000.1 (FHA Single Family Housing Policy Handbook).

PURPOSES OF THE SYSTEM:

SAMS is a management and accounting system for HUD Federal Housing Administration (FHA)-owned single-family properties for sale, or maintained as, Real Estate Owned (REO) custodial home, that HUD acquires when a lender forecloses on a property and conveys the title to HUD. SAMS supports HUD staff at Headquarters, Homeownership Centers (HOCs), and HUD's Management and Marketing

(M&M) contractors in tracking single-family properties from their acquisition by HUD through the steps necessary to resell the properties. SAMS captures and processes all financial transactions related to repairing, leasing, listing, and selling the properties, including payments for contractor services, taxes, and homeowner association and condominium fees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Purchasers, successful bidders of Federal Housing Administration (FHA) Single-Family owned homes; Approved business partners of FHA's REO program for collections and payments resulting from their participation as a REO loan originator, loan servicer, claims servicer, real estate brokers, title company, appraiser, property manager, lessee; Mortgagors, including Business and Homebuyers of Real Estate Owned properties (REO); Borrowers, who have defaulted on a HUD loan; HUD Single Family Property Disposition Program Management and Marketing (M&M) contractors; and HUD employees and contractors involved with REO property functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full Name, Social Security Number (SSN), Address (Work and Personal), Date of Birth, Employer Identification Number, Email Address (Work and Personal), Employee Identification Number; Financial Information (bank account numbers, lender ids), Legal Documents (foreclosure, deed-in-lieu agreements), Name and Address Identification Number (NAID), Phone Number (Work and Personal), Race/Ethnicity, Salary (income certification), Taxpayer ID including taxing authority profile, Telephone number, Fax number, and User Ids.

RECORD SOURCE CATEGORIES:

On-line data entry by HUD staff via SAMS Web and exchanged from sources (*i.e.,* purchasers, lender originators, lender servicers, brokers, homeowner association, appraisers, title companies, HUD employees, contractors). Internal and External data exchanges from the following systems:

- Office of Single-Family Housing.
  - Computerized Homes Underwriting Management System (CHUMS)
  - Lender Electronic Assessment Portal (LEAP).
- Office of Finance and Budget.
  - Single Family Insurance Subsystem (SFIS–CLAIMS)
  - Home Equity Reverse Mortgage Information Technology (HERMIT)
  - Electronic Data Interface System (EDIS)
- Office of Single-Family Asset Management.
  - Asset Disposition and Management System (ADAMS)
- Office of the Chief Information Officer
  - Digital Identity and Access Management System (DIAMS).
- U.S. Department of the Treasury
  - Bureau of the Fiscal Service: Lockbox Network Systems, Intra-Governmental Payment and Collection Cross Servicing, Treasury Offset Program
  - Internal Revenue Service (IRS): FIRE tax compliance program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

(1) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS's offering of mediation service to resolve disputes between persons making FOIA requests and administrative agencies.

(2) To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(3) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement, for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(4) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

(5) To Department of Treasury Internal Revenue Service (IRS) for the purpose of reporting miscellaneous income on form 1099–MISC for HUD' business transactions with Management and Marketing (M&M) Contractors, tax year reporting, in connection with their services performed in the maintenance of HUD REO homes.

(6) To the Department of Treasury, Bureau of the Fiscal Service, their agents, entities and banking institutions (not related to taxes) that provide payment and collection services for HUD: (1) Administrative (Payment Services): Issuing payments and other remittance services for payments certified to authorized contractors, vendors, tax authorities, and others authorized on HUD's behalf. (2) Cross-Servicing (Collection Services): Pursuing financial transactions for payments owed to HUD from buyers, mortgagors, settlement agents, closing agents, lender servicers and other authorized collections due.

(7) To financial institutions, vendors, mortgagees, management and marketing contractors, and their authorizing officials, as well as affiliates and other parties required, in connection with HUD's REO Office of Single-Family Asset Management, disclosures are made: (1) To maintain, process, inspect, market, and respond to business payee transactions, inquiries, errors, and corrections related to HUD REO properties. (2) To provide a listing of REO asset sales, along with their associated commissions, to the relevant selling brokers.

(8) To Financial Control Contractors for processing data input for SAMS system that is written in proprietary code.

(9) To contractors, experts and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(10) To appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breach of the system of records,· (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, [the agency] (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 HUD's efforts to respond to the suspected or confirmed

breach or to prevent, minimize, or remedy such harm.

(11) To another Federal agency or Federal entity, when [the agency] determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(12) To appropriate Federal, state, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws, when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(13) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(14) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by Social Security Number and Name.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the National Archives and Records Administration, General Records Schedule 1.1, Financial Management and Reporting Records; GRS 3.1, Information Technology Development Records; GRS 3.2, Information Security Records; 4.2 Information Access and Protection Records; and 5.2, Transitory and Intermediary Records. General records are maintained for periods of 1–6 years unless a longer retention period is deemed necessary for investigative purposes or business use. Electronic records will be destroyed in accordance with systems disposal and NIST 800–88 Guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative Controls: Backups Secured Off-Site; Methods to Ensure Only Authorized Personnel Access to PII; Periodic Security Audits; Regular Monitoring of Users' Security Practices; FIPS 199 determination. HUD access is safeguarded according to rules and policies, including all applicable automated processes according to security and privacy safeguard policies. HUD has imposed strict controls to minimize the risk of compromising the information being stored. Primary and recovery facilities control physical access to information system output devices to prevent unauthorized individuals from obtaining the output. Back-ups are secured off-site, periodic security audits are performed, and regular monitoring of user's security practices are enforced.

Technical Controls: Firewall; Role-Based Access Controls; Virtual Private Network (VPN); Least Privilege Access; User Identification and Password; and PIV Card. The system incorporates role-based access controls, least privilege access controls, and virtual private access controls. Access is limited to authorized personnel and requires a password and user ID before system access is granted. Records are maintained in a secured computer network behind HUD's firewall. The system sends and receives data through HUD Security File Transfer Protocol (SFTP), which encrypts the data. SSNs are encrypted during transmission to protect session information.

Physical Controls: Key cards; Security Guards; and Identification badges. Secure physical methods are used to ensure only authorized users have access to PII or HUD and its approved facilities. Access is controlled by key card, controlled access, security guards, and identification badges. Periodic security audits, regular monitoring of system users' behavior is conducted; Primary and recovery facilities control physical access to information system output devices to prevent unauthorized individuals from obtaining the output. Hard copies are stored in locked file cabinets in secured rooms with restricted access.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street, SW Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a revision to the previously published notice published in the Federal Modification to Docket No. 88 FR 45239 (July 14, 2023); Docket No. 71

FR 35443 (June 20, 2006); Document No.79 FR 10825 (February 26, 2014).

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–22175 Filed 10–4–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6429–N–01]

Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

ACTION: Notification of benchmarks.

SUMMARY: HUD's regulations require that HUD set Section 3 benchmarks by publishing a notification, subject to public comment, in the **Federal Register** and update the benchmarks no less frequently than once every three years by the same method of notification. This notice updates the 2020 version of the benchmark notice and requests public comment about the Section 3 benchmark goals.

DATES: *Effective Date:* November 6, 2023.

FOR FURTHER INFORMATION CONTACT: Nathan Roush, Program Analyst, Office of Field Policy and Management, Department of Housing and Urban Development, Five Points Plaza, 40 Marietta St NW, Atlanta, GA 30303, telephone number 678–732–2045 (this is not a toll-free number). General email inquiries regarding Section 3 may be sent to *Section3@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3 through regulation, which HUD has done through the publication of the Section 3 final rule, titled ''Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,'' 85 FR 61524 (''HUD's Section 3 Final Rule''). This final rule is codified in 24 CFR part 75.

HUD's Section 3 regulations require the establishment of Section 3 benchmarks for Section 3 workers and Targeted Section 3 workers through a document published in the **Federal Register**. 24 CFR 75.13(b) and 75.23(b). Consistent with these requirements, HUD published a benchmark notice in the **Federal Register** on September 29, 2020, titled ''Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,'' 85 FR 60907. HUD's Section 3 regulations also require HUD to update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every three years. 24 CFR 75.13(b)(1) and 75.23(b)(1).

II. Section 3 Benchmarks

HUD's Section 3 regulations require that in altering and updating the established benchmark goals, HUD must consider Section 3 labor hour data collected during the prior three-year period. 24 CFR 75.13(b)(1) and 75.23(b)(1). After evaluation and consideration of the data collected to date, HUD has determined that the available data is not a sufficiently representative sample to support the alteration of the current published benchmark goals or publication of aggregate labor hour data. Therefore, the benchmark goals will continue to be the ratios established in the original Section 3 benchmark notice published September 29, 2020, and HUD will continue to support the labor hour goal methodology contained therein.

HUD considered a number of factors in making this decision. Despite being published on September 29, 2020, HUD's Section 3 final rule did not go into effect until November 30, 2020, and compliance only began to be required for activities and projects funded on or after July 1, 2021. This means that activities and projects funded prior to July 1, 2021, were not required to report labor hours under 24 CFR part 75, which does not give HUD a full three years of data to review. Additionally, the count of labor hours and evaluation of achievement of benchmark goals are not determined until an activity or project is completed. Given the varying duration of construction projects, a number of larger Section 3 projects—those with higher numbers of labor hours—funded after July 1, 2021, have not yet completed construction and therefore have not reported final labor hours for Section 3 workers or Targeted Section 3 workers. These factors, among others, have contributed to initial reports containing limited data on a small subset of projects, which HUD believes does not create a large- or representative-enough sample of data to merit a change to the existing benchmarks or publication of aggregate data on labor hours and the proportion of recipients meeting benchmarks.

While HUD has decided not to change the benchmark goals for Public Housing Financial Assistance and Section 3 Projects, HUD would like to solicit public comment on any matters related to this notice, generally, but specifically on the experience of grantees, contractors, and other stakeholders in achieving the existing benchmark goals along with any challenges faced or recommendations for appropriate benchmarks for future updates. HUD will not be issuing a second notice regarding the current Section 3 benchmarks unless the comments provide HUD with a basis for making revisions to the benchmarks.

HUD will publish another notice to update Section 3 benchmarks no later than three years after the publication of this notice, as required by HUD's Section 3 regulations.

Michele Perez,

Assistant Deputy Secretary for Field Policy and Management.

[FR Doc. 2023–22183 Filed 10–4–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–LE–2023–N075; FF09L00200–FX–LE18110900000; OMB Control Number 1018–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before November 6, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0012'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On May 5, 2023, we published in the **Federal Register** (88 FR 29145) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 5, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–LE–2023–0049) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received the following comments in response to that notice:

Comment 1: Electronic comment received May 5, 2023, via *Regulations.gov* (FWS–HQ–LE–2023–0049–0003) from Jean Public.

Agency Response to Comment 1: The commenter did not address the information collection requirements. No response is required.

Comment 2: Electronic comment received June 8, 2023, via *Regulations.gov* (FWS–HQ–LE–2023–0049–0004) from Laura Bies, on behalf of the Ornithological Council. First, the commenter stated that it is difficult to enter many specimens into the e-Decs system individually rather than being able to upload a spreadsheet or a batch of information. Individual entry takes several hours, and the eDecs system appears to time out. Second, the commenter stated that automatic recognition of species' protected status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Endangered Species Act (ESA or Act), the Migratory Bird Treaty Act (MBTA), etc., by the eDecs system when the importer/exporter is entering them, would be helpful and would save a lot of time. Third, the commenter agreed that the average estimate for an eDec with one species is 10 minutes, but for a scientific eDec with many species, it may take hours.

Agency Response to Comment 2: First, we are working on a tool in eDecs that will allow bulk entry of species comparable to what the commenter describes. Second, it is up to the importer/exporter to know the status and the requirements for the species they are importing or exporting; further, we are concerned that if the system flags a species as protected, dishonest importers/exporters will simply choose a different species and declare the species as that one instead. Third, we note the commenter's points about the burden estimate and have addressed them below, along with the comments we received from the outreach regarding the burden estimate.

Comment 3: Electronic comment received June 26, 2023, via *Regulations.gov* (FWS–HQ–LE–2023–0049–0005) from Jose D. Gonzalez, President, on behalf of the National Customs Brokers & Forwarders Association of America, Inc. First, the commenter stated that the container number is available in Automated Commercial Environment (ACE). Relatedly, the commenter said that the container number is not known for exports, because the container is loaded after inspection. Second, the commenter notes that the permit number and port exception number are available in ACE, while the CITES tag number is available on the CITES certificate. Third, the commenter states that the additional data elements may not apply to exports and asks for an N/A option. Fourth, the commenter states that ACE does not support the generation of multiple eDecs per entry. Fifth, the commenter provided burden estimates for declaration filing; 15–20 minutes for eDecs, 10–15 minutes for a complete data set in ACE, and 15–25 minutes for a limited data set in ACE. The commenter added that the burden goes beyond the actual data entry and includes preparation and post-entry elements.

Agency Response to Comment 3: First, not all declarations are submitted through ACE, so we need to ask for the container number in eDecs and on the 3–177. The container number is sometimes known for exports, but we will not make this a required field. Second, again, not all declarations are submitted through ACE, and we note that the CITES certificate has the tag number, but it will better enable our inspection efforts to have it on the declaration in eDecs, and in ACE as well. Third, we disagree that these additional elements do not apply to exports, as all of them could; a field may be required based on the commodity and location of export. Fourth, we recognize that the systems have this limitation; it is a problem we hope to address in the future, recognizing that there are budget constraints. Fifth, we note the comments about additional efforts relating to the import process from the commenter. Lastly, we note the burden estimates and have addressed them below, along with the comments we received from the outreach regarding the burden estimate.

Comment 4: Anonymous comment received July 2, 2023, via *Regulations.gov* (FWS–HQ–LE–2023–0049–0006).

Agency Response to Comment 4: The commenter did not address the information collection requirements. No response is required.

Comment 5: Electronic comment received July 4, 2023, via *Regulations.gov* (FWS–HQ–LE–2023–0049–0007) from John McLaurin, President, on behalf of Safari Club International. The commenter expressed concern about the personal information of hunters who import and export

harvested wildlife and therefore use the 3–177 form. The commenter suggested changes to the existing Privacy Act and Paperwork Reduction Act statements on the form that would reflect a commitment to withhold declarants' personal private information under Freedom of Information Act (FOIA) Exemptions 6 and 7(A). The commenter also requested that we add a place on the form where declarants could indicate they want their personal information withheld from disclosure.

Agency Response to Comment 5: The commenter submitted comments on the existing Privacy Act and Paperwork Reduction Act Statements. We included revised statements with the draft form we placed in the docket along with the 60-day notice. We have since revised the Privacy Act and Paperwork Reduction Act, and FOIA statements. In particular, we revised the FOIA statement to address personal identifiable information under Exemption 6. With this addition to the statement, there is no need for declarants to identify personal information for withholding. We did not make changes to the Paperwork Reduction Act Statement, as submissions are voluntary.

Comment 6: Electronic comment received July 4, 2023, via *Regulations.gov* (FWS–HQ–LE–2023–0049–0008) from Tanya Sanerib, International Legal Director, Center for Biological Diversity, and from Nicholas Arrivo, Managing Attorney, on behalf of The Humane Society of the United States. First, the commenter notes that the information we receive on Forms 3–177 is essential for law enforcement functions, for meeting CITES obligations, and for us and the public to understand and monitor trade. Second, the commenter makes several suggestions regarding the FOIA statement, including that the statement should reflect that all information received will be disclosed, except for some personally identifiable information under FOIA exemptions 6 and 7(A), and that the commercial information exemption (exemption 4), should not apply. The commenter also states that we should not continue to engage in a submitter notice review process that is burdensome on us and on data submitters, and their changes would allow us to avoid this. Third, the commenter states that the form should say that imports/exports will be denied if the 3–177 is not completed. Fourth, the commenter states that the full scientific and common name of each species needs to be on the 3–177; for example, marine aquarium tropical fish importers do not provide that information, so it is not clear what species are being imported. Fifth, the commenter states that submitters do not always fill out the number of specimens imported/exported, but rather the number of cartons; we should require both. Lastly, the commenter states that our recent application of FOIA exemption 4 has created an incredibly onerous system for data submitters and for us, and their suggested changes to the FOIA statement would resolve this.

Agency Response to Comment 6: Regarding the FOIA statement suggestion that all information should be disclosed except for personally identifiable information, we agree in part. We will continue to apply Exemption 4 as explained in the draft form's FOIA statement, and we added a statement reflecting that personally identifiable information will be withheld as appropriate under Exemption 6. We are retaining our previous language and proposed process under Exemption 4 of the FOIA regarding submitted commercial information. The Service believes that it is possible that a submitter could make an appropriate showing, in some circumstances, that Exemption 4 applies to information on the 3–117. Because Exemption 4 relies upon information provided by a submitter, it is necessary that the Service include instructions for transmitting that information. We believe the approach outlined on the draft form's statement is appropriate. Because various FOIA requesters ask for import/export data in a variety of ways, we think that an approach led by the FOIA Officer will lead to less burden on the day-to-day requester and allow the Service to apply Exemption 4 more accurately.

Next, regarding the commenter's statement that the notices on the form should say that authorization to import/export wildlife will be denied if the form is incomplete, we made some changes in this language so that the public knows submission of the information is voluntary. We also clarified that information submission is required to receive import/export authorization and that failure to provide all requested information may result in denial of authorization. We will not select automatic denial in all cases and state that on this form; we routinely work with importers/exporters to correct mistakes, and we have enforcement discretion that we do not want to limit without compelling justification.

Regarding requiring the full and scientific names, we are working on programming that will allow improved/bulk entry of species names, and we hope will increase the number of species identified in the 3–177 vs. in supporting documents. As for the number of specimens, that is a required item. Lastly, we appreciate the commenter's efforts to suggest improvements to overcome the challenges presented to the Service by the application of FOIA exemptions to such an expansive database. The Service looks forward to working with the public to better inform its Exemption 4 practice in ways that enhance our mission and fully comply with the law.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report as necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES; 16 U.S.C. 1538(e)). With some exceptions, individuals, businesses, and others importing into or exporting from the United States any fish or wildlife must complete and submit to the Service an FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife). This form, as well as FWS Form 3–177a (Continuation Sheet) and instructions for completion, are available for electronic submission at *https://edecs.fws.gov.* These forms are also available in fillable format at *http://www.fws.gov/forms/.* The information that we collect enables us to:

- Accurately inspect the contents of the shipment;
- Enforce any regulations that pertain to the fish, wildlife, or plants contained in the shipment; and
- Maintain records of the importation and exportation of these commodities.

Individuals, businesses, and others must file FWS Forms 3–177 and 3–177a with us at the time of import or export of fish or wildlife. Our regulations allow certain species of fish or wildlife to be imported or exported between the United States and Canada or Mexico at U.S. Customs and Border Protection ports, even though our wildlife inspectors may not be present. In these instances, importers and exporters may submit the hard copy of the completed forms to U.S. Customs and Border Protection (CBP). We later collect these submitted forms from CBP and enter the information into the Service's Law Enforcement Management Information System (LEMIS). Form 3–177 collects the following information:

1. Date of the import/export;
2. Import/export license number;
3. Whether the shipment is an import or export;
4. Port of clearance;
5. Purpose code;
6. Customs documents number(s);
7. Name of carrier;
8. Transportation code;
9. Bonded location for inspection;
10. Whether the importer/exporter is based in the United States or in a foreign country;
11. Name, address, phone, and email of importer/exporter;
12. Identifier number and ID type of importer/exporter;
13. Name, phone, fax, email address, and contact person for customs broker, shipping agent, or freight forwarder;
14. Identifier number and ID type of customs broker, shipping agent, or freight forwarder;
15. Scientific and common name of the fish or wildlife;
16. Permit numbers (if permits are required);
17. Description, quantity, and value of the fish or wildlife;
18. Natural country of origin of the fish or wildlife; and
19. Whether the wildlife is live and venomous.

In addition, certain information, such as the airway bill or bill of lading number, the location of the shipment containing the fish or wildlife for inspection, and the markings on cartons and number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is necessary.

We are also requesting OMB's continued approval for electronic collection of data through CBP's Automated Commercial Environment (ACE) portal as an alternative electronic option for importers to eDecs. ACE is the system through which the trade community transmits international trade data required by CBP and all other participating government agencies. The Safe Port Act requires the Service to participate in the International Trade Data System, and the Executive Order on Streamlining Exports and Imports establishes ACE as the primary means for collection of international trade data by the government. Although the Service does not mandate importers to use ACE to file Service data at this time, if the filer chooses to file in ACE, we will collect the data from ACE as an alternative to eDecs. If importers file in ACE, they should not file in eDecs.

Proposed Revisions to This Information Collection

With this submission, we propose the following revisions to this information collection for OMB approval:

1. We propose to collect the container number for fish or wildlife shipped via ocean cargo. When fish or wildlife are imported and exported on cargo ships, they are packed in shipping containers, which have unique numbers. When our inspectors receive documents for these shipments, the documents often, but do not always, include the container number. However, Form 3–177 currently does not have a field for the container number. It is difficult for our wildlife inspectors to locate a shipment at a seaport without the container number, as ocean cargo shipments are tracked by container number. By adding a field for the container number to Form 3–177 and thus requiring this information on the form, we will improve our ability to inspect ocean cargo shipments and expedite the inspection process for individuals, businesses, and others who ship via ocean cargo.

2. Second, we propose to add a field to collect U.S. permit numbers other than CITES. Currently, we require importers and exporters to include the number for a U.S. CITES permit for those CITES listed species that require a U.S. CITES permit. They may also or instead have other U.S.-issued wildlife permits, such as those required under the Endangered Species Act, Migratory Bird Treaty Act, Marine Mammal Protection Act, Wild Bird Conservation Act, Bald and Golden Eagle Protection Act, and Lacey Act. These additional permit numbers will enable us to link the Form 3–177 to the permit. This will improve data collection and analysis, as we will be able to better ascertain what fish or wildlife is being imported and exported and tie it to what is being permitted. It will also help us ensure that permits are not duplicated and are used the allowable number of times, aiding enforcement.

3. Next, we propose to add a field to collect the designated port exception permit number. We have designated certain ports for import and export of fish and wildlife (see 50 CFR 14.12). Generally, individuals, businesses, and others who seek to import and export fish and wildlife at non-designated ports must obtain a designated port exception permit by submitting an application and paying the appropriate fees (see 50 CFR part 13). When they file Form 3–177, they must also include the issued designated port exception permit in their document package. Requiring importers and exporters to put the permit number on Form 3–177, along with the import-export license number (which we already require on Form 3–177), will assist us in tracking permits and making sure that importers and exporters are authorized to use the ports they are seeking to use. Having the number easily accessible on Form 3–177 will help to streamline the review process. If they are not authorized because they have not obtained the designated port exemption permit for the particular port, it will assist us with enforcement.

4. Next, we propose to add a field to collect the CITES tag or marking number for sport-hunted wildlife species that require a CITES tag or marking for import, export, and in-transit shipments (see 50 CFR 23.74(e)). Those species include black rhinoceros, crocodilians (all members of the order *Crocodilia,* which includes alligators, caimans,

crocodiles, and gavials), elephants, leopards, and markhor. A CITES tag or marking is specific to an individual wildlife item and may not be used for multiple wildlife items. Each CITES tag or marking has a unique alphanumeric identifier. Requiring placement of the CITES tag or marking number on Form 3–177 will help ensure we can match the tag or marking to the Form 3–177 declaration and verify that the tag or marking has only been used once. Thus, we will improve our ability to inspect shipments of these species, expedite inspections, and improve enforcement. It will also bolster our ability to meet our obligations under the CITES treaty.

As part of the renewal of and proposed changes for this information collection, we also will review the instructions pages of Form 3–177 to determine what updates are appropriate.

The public may request copies of any form or document contained in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Declaration for Importation or Exportation of Fish or Wildlife, 50 CFR 14.61–14.64 and 14.94(k)(4).

OMB Control Number: 1018–0012.

Form Number: 3–177 and 3–177a.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals, businesses, or others that import or export fish, wildlife, or plants; scientific institutions that import or export fish, wildlife, or plant scientific specimens; and government agencies that import or export fish, wildlife, or plant specimens for various purposes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Annual number of respondents	Total annual responses	Completion time per response (minutes)	Total annual burden hours *
FWS Form 3–177 Hard Copy (Upon Import)				
Individuals	2,884	3,107	15	777
Private Sector	1	1	15	0
Subtotals	*2,885*	*3,108*		*777*
FWS Form 3–177 Hard Copy (Upon Export)				
Individuals	76	76	15	19
Private Sector	1	1	15	0
Subtotals	*77*	*77*		*19*
eDecs (Upon Import)				
Individuals	1,273	15,576	12	3,115
Private Sector	1,563	110,653	12	22,131
Government	89	347	12	69
Subtotals	*2,925*	*126,576*		*25,315*
eDecs (Upon Export)				
Individuals	642	15,782	12	3,156
Private Sector	429	16,258	12	3,252
Government	61	213	12	43
Subtotals	*1,132*	*32,253*		*6,451*
ACE (Upon Import)				
Individuals	1	1	10	0
Private Sector	81	12,828	10	2,138
Government	1	1	10	0
Subtotals	*83*	*12,830*		*2,138*
ACE/AES Disclaimer				
Private Sector	819	149,820	1	2,497
Totals	*7,921*	*324,664*		*37,197*

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–22181 Filed 10–4–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010 .999900; OMB Control Number 1076–0100]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Acquisition of Trust Land

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 6, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202212-1076-009* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.''

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; *comments@bia.gov;* (202) 924–2650. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. You may also view the ICR at *https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0100.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 5, 2023 (88 FR 879). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 5 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 5108) and the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. 2202) authorize the Secretary of the Interior (Secretary), in his/her discretion, to acquire lands through purchase, relinquishment, gift, exchange, or assignment within or without existing reservations for the purpose of providing land for Indian Tribes. Other specific laws also authorize the Secretary to acquire lands for individual Indians and Tribes. Regulations implementing the acquisition authority are at 25 CFR 151. In order for the Secretary to acquire land on behalf of individual Indians and Tribes, the BIA must collect certain information to identify the party(ies) involved and to describe the land in question. The Secretary also solicits additional information deemed necessary to make a determination to accept or reject an application to take land into trust for the individual Indian or Tribe, as set out in 25 CFR 151. This information collection allows the BIA to review applications for compliance with regulatory and statutory requirements. No specific form is used.

Title of Collection: Acquisition of Trust Land.

OMB Control Number: 1076–0100.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians and Federally Recognized Indian Tribes seeking acquisition of land into trust status.

Total Estimated Number of Annual Respondents: 500.

Total Estimated Number of Annual Responses: 500.

Estimated Completion Time per Response: Ranges from 100 to 150 hours.

Total Estimated Number of Annual Burden Hours: 55,000.

Respondent's Obligation: Required to obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2023–22225 Filed 10–4–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500173200 AZ–SRP–030–23–26]

Notice of Temporary Closure and Temporary Restrictions of Selected Public Lands in La Paz County, AZ—Legacy Racing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure and restrictions.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, notice is hereby given that temporary closures and temporary restrictions of activities will be in effect on public lands administered by the Lake Havasu Field Office, Bureau of Land Management (BLM), to minimize the risk of potential collisions with spectators and racers during the Legacy Racing off-highway vehicle (OHV) race event authorized under a Special Recreation Permit.

DATES: The temporary restrictions for the Legacy Racing Event take effect at 11:59 p.m., February 19, and last through midnight February 25, 2024. The temporary closure takes effect at 11:59 p.m., February 20, and lasts through midnight February 25, 2024. All times listed are in local time.

FOR FURTHER INFORMATION CONTACT: Sabrina Bice, Outdoor Recreation Planner, BLM Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona 86403, telephone (928) 302–4255, email *sbice@blm.gov*. Also see the Lake Havasu Field Office website: *https://www.blm.gov/office/lake-havasu-field-office.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On January 6, 2015, the decision record authorizing off-road high-speed events on the Parker 400 racecourse was signed. The environmental assessment analyzing these routes (EA #DOI–BLM–AZ–C030–2014–0040) concluded that allowing permitted motorized racers exclusive use of the *Lake Havasu Field Office Record of Decision/Approved Resource Management Plan* (2007) designated Parker 400 course would mitigate safety concerns.

These temporary closures and restrictions affect public lands in and around Parker and Bouse in La Paz County, Arizona. The temporary closure applies to all public use, including pedestrian and vehicles, unless excepted. The temporary closure area follows the Parker 400 racecourse as designated in the 2007 Lake Havasu Resource Management Plan. The temporary restriction area begins on public lands east of the eastern boundary of the Colorado River Indian Tribe (CRIT) Reservation, along Shea Road, then east into Osborne Wash onto the Parker-Swansea Road to the Central Arizona Project (CAP) Canal, then north on the west side of the CAP Canal, crossing the canal on the county-maintained road, running northeast into Mineral Wash Canyon, then southeast on the county-maintained road, through the four-corners intersection to the Midway (Pit) intersection, then east on Transmission Pass Road, through State Trust Land located in Butler Valley, turning north into Cunningham Wash to North Tank; continuing south to Transmission Pass Road and east (reentering public land) within two miles of Alamo Dam Road. The temporary restriction area boundary turns south and west onto the wooden power line road, onto the State Trust Land in Butler Valley, turning southwest into Cunningham Wash to the Graham Well, intersecting Butler Valley Road, then north and west on the county-maintained road to the ''Bouse Y'' intersection, two miles north of Bouse, Arizona. The temporary restriction area boundary proceeds north, paralleling the Bouse-Swansea Road to the Midway (Pit) intersection, then west along the north boundary (power line) road of the East Cactus Plain Wilderness Area to Parker-Swansea Road. The temporary restriction area boundary turns west into Osborne Wash crossing the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area; it continues west staying in Osborne Wash and crossing Shea Road along the southern boundary of Gibraltar Wilderness, rejoining Osborne Wash at the CRIT Reservation boundary.

The temporary closures and restrictions are necessary because of the high-speed nature of the race event and the added safety concerns due to the limited visibility when there is no daylight. Roads leading into the public lands under the temporary closure and restrictions will be posted with copies of the temporary closure, temporary restrictions, and associated maps to notify the public. The temporary closure and restriction orders will be posted in the Lake Havasu Field Office and online at *https://www.blm.gov/office/lake-havasu-field-office.* Maps of the affected area and other documents associated with this temporary closure are available at the Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona.

The closures and restrictions are issued under the authority of 43 CFR 8364.1, which allows the BLM to establish closures for the protection of persons, property, and public lands and resources. Violation of any of the terms, conditions, or restrictions contained within this closure order may subject the violator to citation or arrest with a fine or imprisonment, or both, as specified by law.

Temporary Closure

a. The designated racecourse is closed to public entry during the temporary closure, with the following exceptions:

i. The person is an employee or authorized volunteer with the BLM, a law enforcement officer, emergency medical service provider, fire protection provider, or another public agency employee working at and assigned to the event;

ii. The person is working at or attending the event directly on behalf of the permit holder.

b. Motor vehicles may be operated within the temporary closure area under the circumstances listed below:

i. Race participants and support vehicles on designated routes;

ii. BLM, medical, law enforcement, and firefighting vehicles are authorized at all times;

iii. Vehicles operated by the permit holder's staff or contractors and volunteers are authorized at all times. These vehicles must display evidence of event registration at all times in such manner that it is visible to the front of the vehicle while the vehicle is in motion.

Temporary Restrictions

1. Environmental Resource Management and Protection

a. Cutting or collecting firewood of any kind, including dead and downed wood or other vegetative material, is prohibited.

b. Grey Water Discharge: The discharge and dumping of grey water onto the ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, food scraps, or food residue, regardless of whether such products are biodegradable or have been filtered or disinfected.

c. Human Waste: The depositing of human waste (liquid and/or solid) on the ground surface is prohibited.

2. Alcohol/Prohibited Substance

a. Possession of alcohol by minors is prohibited. Selling or offering to sell any alcoholic beverage on public lands under this notice is prohibited.

3. Drug Paraphernalia

a. The possession of drug paraphernalia is prohibited.

4. Disorderly Conduct

a. Disorderly conduct is prohibited. No person shall cause a public disturbance or create a risk to other persons on public lands by engaging in activities that include, but are not limited to, the following:

i. Making unreasonable noise;

ii. Creating a hazard or nuisance;

iii. Refusing to disperse when directed to do so by an authorized officer;

iv. Resisting arrest or issuance of citation by an authorized officer engaged in performance of official duties; interfering with any Bureau of Land Management employee or volunteer engaged in performance of official duties; or

v. Assaulting, committing a battery upon any individual, or

vi. Knowingly giving any false or fraudulent report of an emergency situation or crime to any Bureau of Land Management employee or volunteer engaged in the performance of official duties.

5. Eviction of Persons

a. The temporary restriction area is closed to any person who:

i. Has been evicted from the event by the permit holder, whether or not the eviction was requested by the BLM;

ii. Has been evicted from the event by the BLM; or

iii. Has been ordered by a law enforcement officer to leave the area of the permitted event.

b. Any person evicted from the event forfeits all privileges to be present within the temporary restriction area.

6. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

i. Motor vehicle operators must possess evidence of valid insurance.

ii. Motor vehicles and trailers must not block a street used for vehicular travel or a pedestrian pathway. Parking any OHV in violation of posted restrictions; or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles; creating a safety hazard; or endangering any person, property, or feature is prohibited. Vehicles parked in violation are subject to citation, removal, and/or impoundment at the owner's expense.

iii. Operating a vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device is prohibited.

iv. Failure to obey any person authorized to direct traffic or control access to event area including law enforcement officers, BLM officials, and designated race officials is prohibited.

7. Public Camping

a. The temporary restriction area is closed to public camping with the following exceptions:

i. The permitted event's spectators, who are camped in designated spectator areas, as marked by protective fencing, barriers, and informational signage provided by the permit holder;

ii. The permit holder's authorized staff, contractors, and BLM-authorized event managers.

b. Spectator area site reservations, denying other visitors or parties from utilizing unoccupied portions of the spectator area by marking with flags, tape, posts, cones, etc. is prohibited. Vehicles and trailers may not be left unattended for over 72 hours.

c. Failure to observe restricted area quiet hours of midnight to 6 a.m. is prohibited.

8. Weapons

a. Discharging or use of firearms or other weapons is prohibited.

b. The prohibition above shall not apply to county, State, Tribal, and Federal law enforcement personnel who are working in their official capacity at the event.

9. Public Use

a. Failure to obey any official sign posted by the BLM, law enforcement, La Paz County, or the permit holder is prohibited.

Existing Regulations

The following list of existing regulations is not intended to be comprehensive. A complete list of laws and regulations applicable to public lands in Arizona may be viewed at: *http://www.azd.uscourts.gov/sites/default/files/general-orders/19-14.pdf.*

1. Environmental Resource Management and Protection

a. No person may deface, disturb, remove, or destroy any natural object—43 CFR 8365.1–5(a)(1).

b. Fireworks: The use, sale, or possession of personal fireworks is prohibited—43 CFR 9212.1(h).

c. Black Water Discharge: The discharge and dumping of black water onto the ground surface is prohibited. Black water is defined as wastewater containing feces, urine, and/or flush water—43 CFR 8365.1–1(b)(3).

d. Trash: The discharge of any trash or litter onto the ground surface is prohibited. All event participants must pack out or properly dispose of all trash at an appropriate disposal facility—43 CFR 8365.1–1(b)(1).

e. Hazardous Materials: The dumping or discharge of vehicle oil, petroleum products, or other hazardous household, commercial, or industrial refuse or waste onto the ground surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators, and other camp infrastructure—43 CFR 8365.1–1(b)(3).

2. Alcohol/Prohibited Substance

a. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion, is prohibited—43 CFR 8365.1–6.

b. Possession of alcohol by minors. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands is prohibited—43 CFR 8365.1–6 Supplementary Rule 63 FR 43716.

c. Operation of a motor vehicle while under the influence of alcohol, marijuana, narcotics, or dangerous drugs is prohibited—43 CFR 8341.1(f)(3).

3. Disorderly Conduct

a. Obstructing, resisting, or attempting to elude a law enforcement officer, or fails to follow their orders or directions is prohibited—43 CFR 8365.1–4(a)(4).

4. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

i. The operator of a motor vehicle must possess a valid driver's license 43 CFR 8341.1©.

ii. Motor vehicles and trailers must possess evidence of valid registration—43 CFR 8341.1(d).

iii. Motor vehicles must not exceed the posted speed limit—43 CFR 8341.1(f)(2).

5. Pets or Other Animals

a. Allowing any pet or other animal to be unrestrained is prohibited. All pets must be restrained by a leash of not more than six feet in length—43 CFR 8365.2–1©.

Enforcement: Any person who violates these closures or restrictions may be charged with a violation of Federal law. In accordance with 43 CFR 8365.1–7, a person may also be charged with violations of State and/or local law.

Authority: 43 CFR 8364.1.

William Mack,

District Manager.

[FR Doc. 2023–22211 Filed 10–4–23; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500173198 AZ–SRP–030–23–27]

Notice of Temporary Closure and Temporary Restrictions of Selected Public Lands in La Paz County, AZ—AZ Race Corp., the Parker 400

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure and restrictions.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, notice is hereby given that temporary closures and temporary restrictions of activities will be in effect on public lands administered by the Lake Havasu Field Office, Bureau of Land Management (BLM), to minimize the risk of potential collisions with spectators and racers during AZ Race Corporation's off-highway vehicle (OHV) race event, the Parker 400, authorized under a Special Recreation Permit.

DATES: The temporary restrictions for the Parker 400 take effect at 11:59 p.m., January 7, 2024, and last through 11:59 p.m. January 13, 2024. The temporary closure for the Parker 400 takes effect at 11:59 p.m. January 8, 2024, and lasts through 11:59 p.m. January 13, 2024. All times listed are in local time.

FOR FURTHER INFORMATION CONTACT: Ron Nuckles, Assistant Field Manager, BLM Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona 86403, telephone (928) 505–1284, email *rnuckles@blm.gov.* Also see the Lake Havasu Field Office website: *https://www.blm.gov/office/lake-havasu-field-office.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On January 6, 2015, the Decision Record authorizing the Parker Races was signed. This permit authorizes the utilization of the Parker 400 course for two race events to occur between December 1 and February 28 annually. The Environmental Assessment analyzing these routes (EA #DOI–BLM–AZ–C030–2014–0040) concluded that allowing permitted motorized racers exclusive use of the *Lake Havasu Field Office Record of Decision/Approved Resource Management Plan* (2007) designated Parker 400 course would mitigate safety concerns. These routes receive the most intense and concentrated high-speed use during the two annual permitted events.

These temporary closures and restrictions affect public lands in and around the Parker 400 course near the communities of Parker and Bouse in La Paz County, Arizona. The temporary closure applies to all public use, including pedestrians and vehicles, unless excepted. The temporary closure area follows the Parker 400 course as designated in the 2007 Lake Havasu Resource Management Plan.

Within the temporary restriction area, the temporary restrictions apply in addition to all existing regulations. The temporary restriction area begins on public lands east of the eastern boundary of the Colorado River Indian Tribe (CRIT) Reservation, along Shea Road, then east into Osborne Wash onto the Parker-Swansea Road to the Central Arizona Project (CAP) Canal, then north on the west side of the CAP Canal, crossing the canal on the county-maintained road, running northeast into Mineral Wash Canyon, then southeast on the county-maintained road, through the four-corners intersection to the Midway (Pit) intersection, then east on Transmission Pass Road, through State Trust Land located in Butler Valley, turning north into Cunningham Wash to North Tank, continuing south to Transmission Pass Road and east (reentering public land) within two miles of Alamo Dam Road. The temporary restriction area boundary turns south and west onto the wooden power line road, onto the State Trust Land in Butler Valley, turning southwest into Cunningham Wash to the Graham Well, intersecting Butler Valley Road, then north and west on the county-maintained road to the ''Bouse Y'' intersection, two miles north of Bouse, Arizona. The temporary restriction area boundary proceeds north, paralleling the Bouse-Swansea Road to the Midway (Pit) intersection, then west along the north boundary (power line) road of the East Cactus Plain Wilderness Area to Parker-Swansea Road. The temporary restriction area boundary turns west into Osborne Wash crossing the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area; it continues west, staying in Osborne Wash and crossing Shea Road along the southern boundary of Gibraltar Wilderness, rejoining Osborne Wash at the CRIT Reservation boundary.

The temporary closures and restrictions are necessary because of the high-speed nature of the race event and the added safety concerns due to the limited visibility when there is no daylight. Roads leading into the public lands under the temporary closure and restrictions will be posted with copies of the temporary closure, temporary restrictions, and associated maps to notify the public. The temporary closure and restriction orders will be posted in the Lake Havasu Field Office and online at *https://www.blm.gov/office/lake-havasu-field-office.* Maps of the affected area and other documents associated with this temporary closure are available at the Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona.

The closures and restrictions are issued under the authority of 43 CFR 8364.1, which allows the BLM to establish closures for the protection of persons, property, and public lands and resources. Violation of any of the terms, conditions, or restrictions contained within this closure order may subject the violator to citation or arrest with a penalty of a fine or imprisonment or both as specified by law.

Temporary Closure

a. The designated racecourse as shown in the Lake Havasu Field Office approved RMP and Decision Record is closed to public entry during the temporary closure, with the following exceptions:

i. The person is an employee or authorized volunteer with the BLM, a law enforcement officer, emergency medical service provider, fire protection provider, or another public agency employee working at and assigned to the event;

ii. The person is working at or attending the event directly on behalf of the permit holder.

b. Motor vehicles may be operated within the temporary closure area under the circumstances listed below:

i. Race participants and support vehicles on designated routes;

ii. BLM, medical, law enforcement, and firefighting vehicles are authorized at all times;

iii. Vehicles operated by the permit holder's staff or contractors and volunteers are authorized at all times. These vehicles must display evidence of event registration at all times in such manner that it is visible to the front of the vehicle while the vehicle is in motion.

Temporary Restrictions

1. Environmental Resource Management and Protection

a. Cutting or collecting firewood of any kind, including dead and downed wood or other vegetative material, is prohibited.

b. *Grey Water Discharge:* The discharge and dumping of grey water onto the ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, food scraps, or food residue, regardless of whether such products are biodegradable or have been filtered or disinfected.

c. *Human Waste:* The depositing of human waste (liquid and/or solid) on the ground surface is prohibited.

2. Alcohol/Prohibited Substance

a. Possession of alcohol by minors is prohibited. Selling or offering to sell any alcoholic beverage on public lands under this notice is prohibited.

3. Drug Paraphernalia

a. The possession of drug paraphernalia is prohibited.

4. Disorderly Conduct

a. Disorderly conduct is prohibited. No person shall cause a public disturbance or create a risk to other persons on public lands by engaging in activities that include, but are not limited to, the following:

i. Making unreasonable noise;

ii. Creating a hazard or nuisance;

iii. Refusing to disperse when directed to do so by an authorized officer;

iv. Resisting arrest or issuance of citation by an authorized officer engaged in performance of official duties; interfering with any Bureau of Land Management employee or volunteer engaged in performance of official duties; or

v. Assaulting, committing a battery upon any individual, or

vi. Knowingly giving any false or fraudulent report of an emergency situation or crime to any Bureau of Land Management employee or volunteer engaged in the performance of official duties.

5. Eviction of Persons

a. The temporary restriction area is closed to any person who:

i. Has been evicted from the event by the permit holder, whether or not the eviction was requested by the BLM;

ii. Has been evicted from the event by the BLM; or

iii. Has been ordered by a law enforcement officer to leave the area of the permitted event.

b. Any person evicted from the event forfeits all privileges to be present within the temporary restriction area.

6. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

i. Motor vehicle operators must possess evidence of valid insurance.

ii. Motor vehicles and trailers must not block a street used for vehicular travel or a pedestrian pathway. Parking any OHV in violation of posted restrictions; or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles; creating a safety hazard; or endangering any person, property, or feature, is prohibited. Vehicles parked in violation are subject to citation, removal, and/or impoundment at the owner's expense.

iii. Operating a vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device is prohibited.

iv. Failure to obey any person authorized to direct traffic or control access to the event area, including law enforcement officers, BLM officials, and designated race officials, is prohibited.

7. Public Camping

a. The temporary restriction area is closed to public camping with the following exceptions:

i. The permitted event's spectators, who are camped in designated spectator areas, as marked by protective fencing, barriers, and informational signage provided by the permit holder; and

ii. The permit holder's authorized staff, contractors, and BLM-authorized event managers.

b. Spectator area site reservations, denying other visitors or parties from utilizing unoccupied portions of the spectator area by marking with flags, tape, posts, cones, etc. is prohibited. Vehicles and trailers may not be left unattended for over 72 hours.

c. Failure to observe restricted area quiet hours of midnight to 6 a.m. is prohibited.

8. Weapons

a. Discharging or use of firearms or other weapons is prohibited.

b. The prohibition above shall not apply to county, State, Tribal, and Federal law enforcement personnel who are working in their official capacity at the event.

9. Public Use

a. Failure to obey any official sign posted by the BLM, law enforcement, La Paz County, or the permit holder is prohibited.

Existing Regulations

The following list of existing regulations is not intended to be comprehensive. A complete list of laws and regulations applicable to public lands in Arizona may be viewed at: *http://www.azd.uscourts.gov/sites/default/files/general-orders/19-14.pdf.*

1. Environmental Resource Management and Protection

a. No person may deface, disturb, remove, or destroy any natural object—43 CFR 8365.1–5(a)(1).

b. *Fireworks:* The use, sale, or possession of personal fireworks is prohibited—43 CFR 9212.1 (h).

c. *Black Water Discharge:* The discharge and dumping of black water onto the ground surface is prohibited. Black water is defined as wastewater containing feces, urine, and/or flush water—43 CFR 8365.1–1(b)(3).

d. *Trash:* The discharge of any and all trash/litter onto the ground surface is prohibited. All event participants must pack out or properly dispose of all trash at an appropriate disposal facility—43 CFR 8365.1–1(b)(1).

e. *Hazardous Materials:* The dumping or discharge of vehicle oil, petroleum products, or other hazardous household, commercial, or industrial refuse or waste onto the ground surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators, and other camp infrastructure—43 CFR 8365.1–1(b)(3).

2. Alcohol/Prohibited Substance

a. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion, is prohibited—43 CFR 8365.1–6.

b. Possession of alcohol by minors. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands is prohibited—43 CFR 8365.1–6 Supplementary Rule 63 FR 43716.

c. Operation of a motor vehicle while under the influence of alcohol, marijuana, narcotics, or dangerous drugs is prohibited—43 CFR 8341.1(f)(3).

3. Disorderly Conduct

a. Obstructing, resisting, or attempting to elude a law enforcement officer, or failing to follow their orders or directions is prohibited—43 CFR 8365.1–4(a)(4).

4. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

i. The operator of a motor vehicle must possess a valid driver's license 43 CFR 8341.1(e).

ii. Motor vehicles and trailers must possess evidence of valid registration—43 CFR 8341.1(d).

iii. Motor vehicles must not exceed the posted speed limit—43 CFR 8341.1(f)(2).

5. Pets or Other Animals

a. Allowing any pet or other animal to be unrestrained is prohibited. All pets must be restrained by a leash of not more than six feet in length—43 CFR 8365.2–1(c).

Enforcement: Any person who violates these closures or restrictions may be tried under Federal law. State or local officials may also impose penalties for violations of State and/or local law.

Authority: 43 CFR 8364.1

William Mack,

District Manager.

[FR Doc. 2023–22210 Filed 10–4–23; 8:45 am]

BILLING CODE 4331–12–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–686–688 and 731–TA–1612–1617 (Final)]

Brass Rod From Brazil, India, Israel, Mexico, South Africa, and South Korea; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–686–688 and 731–TA–1612–1617 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of brass rod from Brazil, India, Israel, Mexico, South Africa, and South Korea, provided for in subheadings 7407.21.15, 7407.21.30, 7407.21.70, and 7407.21.90 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized by the governments of India, Israel, and South Korea. The determinations with respect to imports of brass rod alleged to be sold at less-than-fair-value are pending.

DATES: September 29, 2023.

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202) 708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''The products covered by these investigations are brass rod and bar (brass rod), which is defined as leaded, low-lead, and no-lead solid brass made from alloys such as, but not limited to the following alloys classified under the Unified Numbering System (UNS) as C27450, C27451, C27460, C34500, C35000, C35300, C35330, C36000, C36300, C37000, C37700, C48500, C67300, C67600, and C69300, and their international equivalents.

The brass rod subject to these investigations has an actual cross-section or outside diameter greater than 0.25 inches but less than or equal to 12 inches. Brass rod cross-sections may be round, hexagonal, square, or octagonal shapes as well as special profiles (*e.g.,* angles, shapes), including hollow profiles.

Standard leaded brass rod covered by the scope contains, by weight, 57.0–65.0 percent copper; 0.5–3.0 percent lead; no more than 1.3 percent iron; and at least 15 percent zinc. No-lead or low-lead brass rod covered by the scope contains by weight 59.0–76.0 percent copper; 0–1.5 percent lead; no more than 0.35 percent iron; and at least 15 percent zinc. Brass rod may also include other chemical elements (*e.g.,* nickel, phosphorous, silicon, tin, etc.).

Brass rod may be in straight lengths or coils. Brass rod covered by these investigations may be finished or unfinished, and may or may not be heated, extruded, pickled, or cold-drawn. Brass rod may be produced in accordance with ASTM B16, ASTM B124, ASTM B981, ASTM B371, ASTM B453, ASTM B21, ASTM B138, and ASTM B927, but such conformity to an ASTM standard is not required for the merchandise to be included within the scope.

Excluded from the scope of these investigations is brass ingot, which is a casting of unwrought metal unsuitable for conversion into brass rod without remelting, that contains, by weight, at least 57.0 percent copper and 15.0 percent zinc.

The merchandise covered by these investigations is currently classifiable under subheadings 7407.21.9000, 7407.21.7000, and 7407.21.1500 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheadings 7403.21.0000, 7407.21.3000, and 7407.21.5000. The HTSUS subheadings and UNS alloy designations are provided for convenience and customs purposes. The written description of the scope of the investigations is dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to section 731(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India, Israel, and South Korea of brass rod. Commerce's preliminary determinations with respect to imports of brass rod from Brazil, India, Israel, Mexico, South Africa, and South Korea that are alleged to be sold in the United States at less than fair value are pending.

The investigations were requested in petitions filed on April 27, 2023, by the American Brass Rod Fair Trade Coalition, Washington, District of Columbia; Mueller Brass Co., Port Huron, Michigan; and Wieland Chase LLC, Montpelier, Ohio.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 29, 2023, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, December 12, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Thursday, December 7, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Monday, December 11, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on Monday, December 11, 2023 (one business day prior to hearing). Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is December 6, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 19, 2023. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before December 19, 2023. On January 3, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 5, 2024, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These 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 29, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22150 Filed 10–4–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bytecode Alliance Foundation

Notice is hereby given that, on July 19, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Bytecode Alliance Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NGINX, Inc., San Francisco, CA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Bytecode Alliance Foundation intends to file additional written notifications disclosing all changes in membership.

On April 20, 2022, Bytecode Alliance Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29379).

The last notification was filed with the Department on May 12, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38532).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22224 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act Of 1993—Homeland Security Technology Consortium

Notice is hereby given that, on July 19, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Homeland Security Technology Consortium (''HSTech Consortium'') formerly known as the Border Security Technology Consortium (''BSTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, MRIGlobal, Kansas City, MO; Solid State Scientific Corporation, Hollis, NH; Chance Maritime, Lafayette, LA; CAM2 Technologies dba RedWave Technology, Danbury, CT; The Informatics Applications Group dba TIAG, Reston, VA; and Inmarsat Government, Reston, VA, have been added as parties to this venture.

Also, Artel LLC, Herndon, VA; and Peraton, Inc., Herndon, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HSTech Consortium intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, HSTech Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on April 26, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38539).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22232 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Point of Care Marketing Association

Notice is hereby given that, on July 24, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), POINT OF CARE MARKETING ASSOCIATION (''POCMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Point of Care Marketing Association, Verona, NJ. The nature and scope of POCMA's standards development activities are: to develop, promulgate and publish voluntary consensus standards for the Point of Care Media Advertising Industry using procedures that incorporate the attributes of openness, balance of interests, due process, and appeals process, and consensus. The POCMA intends to standardize the terms and conditions for point of care media advertising to make it easier for advertising agencies and marketers to buy and capture value from advertising in healthcare settings.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22234 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act Of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on July 17, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical CBRN Defense Consortium (''MCDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Flambeau Diagnostics LLC, Monona; WI; Next Earth LLC, Ashburn, VA; and Revagenix, Inc., San Francisco, CA have been added as parties to this venture.

Also, GAP Solutions, Inc., Herndon, VA; Novici Biotech LLC, Vacaville, CA; Presco, Inc., Woodbridge, CT; and WhiteSpace Enterprise Corp., Inc., Fountain Hills, AZ have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on April 6, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 12, 2023 (88 FR 38096).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22227 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.

Notice is hereby given that, on July 17, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Institute of Electrical and Electronics Engineers, Inc. (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 33 new standards have been initiated and 22 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/05jun2023/, https://standards.ieee.org/about/sasb/sba/29jun2023/*.

The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed: *https://standards.ieee.org/about/bog/cag/approvals/july2023/.*

The following conformity assessment programs associated with published IEEE standards and supporting their promulgation were initiated:

IEEE CertifAIEd, *https://engagestandards.ieee.org/ieeecertifaied.html?_gl=1*1nwd00q*_ga*MTUzMjIwNDE4MS4xNjg5MDAxNDUz*_ga_XDL2ME6570*MTY4OTMzNTgzNC41OS4xLjE2ODkzMzYxNjUuMC4wLjA.*

IEEE P1952 Position, Navigation and Timing, *https://standards.ieee.org/products-programs/icap/programs/pnt-user-equipment/.*

On September 17, 2004, IEEE filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on April 10, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38534).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22223 Filed 10–4–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act Of 1993—National Spectrum Consortium

Notice is hereby given that, on July 18, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Distributed Spectrum, Inc., New York, NY; Vorbeck Materials Corp., Jessup, MD; and Metron, Inc., Reston, VA, have been added as parties to this venture.

Also, PrioriTech, Inc., State College, PA; Kestrel Corp., Albuquerque, NM; ICF Incorporated, LLC, Fairfax, VA; Metric Systems Corp., Vista, CA; RWC, LLC, Annapolis, MD; Arizona State University, Tempe, AZ; Haigh-Farr, Inc., Bedford, NH; Ideal Innovations Incorporated, Arlington, VA; Shenandoah Research and Technology, LLC, Mount Jackson, VA; Constellation Data Systems, Inc., Cincinnati, OH; Disney-ABC TV Group, New York, NY; Quasonix, Inc., West Chester, OH; Cognitive Radio Technologies, LLC, Lynchburg, VA; Kerberos International, Inc., Temple, TX; Planned Systems International, Inc., Columbia, MD; TriaSys Technologies Corp., North Billerica, MA; VUUM LLC, Houston, TX; SI2 Technologies, Inc., North Billerica, MA; Trident Technologies, LLC, Huntsville, AL; Unmanned Experts, Inc., Denver, CO; Monterey-Nouveau & Associates, LLC, Dayton, OH; Hercules Research LLC, Chantilly, VA; ANRA Technologies, LLC, Stone Ridge, VA; Black River Systems Company, Inc., Utica, NY; Colorado School of Mines, Golden, CO; Darkblade Systems Corp., Stafford, VA; Signautics Engineering Services, LLC, Dunedin, FL; JRC Integrated Systems, Inc., Washington, DC; Jupiterra LLC, Washington, DC; DRS Sustainment Systems, Inc., St. Louis, MO; DRS Signal Solutions, Inc., Germantown, MD; nLight Solutions LLC, Charlotte, NC; Rensselaer Polytechnic Institute, Troy, NY; Sage Management Enterprise, LLC, Columbia, MD; Under the Grid, LLC, Pacific Grove, CA; SpectrumFi, Sunnyvale, CA; Glover 38th St Holdings LLC, Smithfield, VA; The Research Armadillo, Flower Mound, TX; Welkin Sciences, LLC, Colorado Springs, CO; Domo Tactical Communications, Pinellas Park, FL; NEBENS, LLC, Deer Park, IL; Cloud Front Group, Inc., Reston, VA; University of Michigan, Ann Arbor, MI; University of Dayton, Dayton, OH; The Ohio State University, Columbus, OH; Charles River Analytics, Inc., Cambridge, MA; University of Nevada, Reno, Reno, NV; Fibertek, Inc., Herndon, VA; EMC Corp., McLean, VA; G5 Scientific, LLC, Burlington, MA; Interoptek, Inc, N. Charleston, SC; Kranze Technology Solutions, Inc., Prospect Heights, IL; COMINT Consulting LLC, Golden, CO; OpenJAUS, LLC, Lake Mary, FL; Warrior Support Solutions, LLC, Hollis, NH; Foundry Inc., Millersville, MD; Vanu Inc., Lexington, MA; Avcom of Virginia, Inc., North Chesterfield, VA; Exelis, Inc., Clifton, NJ; Florida International University, Miami, FL; Northwestern University, Evanston, IL; The Research Foundation For The State University Of New York, Buffalo, NY; IQ–ANALOG, San Diego, CA; Drexel University, Philadelphia, PA; Long Wave, Inc., Oklahoma City, OK; NuWaves Engineering, Middletown, OH; Battelle Energy Alliance, LLC, Idaho Falls, ID; Giga-tronics, Incorporated, Dublin, CA; Global Ground Systems, LLC, Purcellville, VA; MIT Lincoln Laboratory, Lexington, MA; Worcester Polytechnic Institute,

Worcester, MA; AX Enterprize, LLC, Yorkville, NY; Covariant Solutions, LLC, Gaithersburg, MD; DynamicSignals LLC, Lockport, IL; Guidestar Optical Systems, Inc, Longmont, CO; KAB Laboratories, Inc., San Diego, CA; Perceptix LLC, Washington, DC; San Diego State University Research Foundation, San Diego, CA; SCAN LLC, St. Louis, MO; Tektronix, Inc., Beaverton, OR; University of Alabama, The, Tuscaloosa, AL; University of Southern California Information Sciences Institute, Marina Del Ray, CA, Waveform Logic, Inc., Winter Park, FL; xG Technology, Sunrise, FL; Ziva Corp., San Diego, CA; Systems & Processes Engineering Corp. (SPEC), Austin, TX; United Technologies Research Center (UTRC), East Hartford, CT; Bascom Hunter Technologies, Inc., Baton Rouge, LA; Avionics Test & Analysis Corp., Niceville, FL; Agile Communications, Inc., El Segundo, CA; Stryke Industries, LLC, Fort Wayne, IN; Red Balloon Security, Inc., New York, NY; Telspan Data, LLC, Concord, CA; Expedition Technology, Inc., Dulles, VA; Applied Engineering Concepts, Inc., Eldersburg, MD; Armaments Research Company, Inc., Bethesda, MD; C–3 Comm Systems, LLC, Arlington, VA; C6I Services Corp., Chesterfield, NJ; Comtech EF Data, Tempe, AZ; DataSoft Corp., Tempe, AZ; D–TA Systems Corp., Centennial, CO; Fregata Systems LLC, St. Louis, MO; General Dynamics SATCOM Technologies, Inc., State College, PA; Genesys Technologies, Ltd., Langhorne, PA; Infinite Dimensions Integration, Inc., West Plains, MO; Innovation Finance Group, Bethesda, MD; Quantum Dimension, Inc., Huntington Beach, CA; SAZE Technologies, LLC, Silver Spring, MD; SCI Technology, Inc., Huntsville, AL; Solvaren, LLC, Wall, NJ; The University of Chicago, Chicago, IL; Ciyis LLC, Atlanta, GA; X–COM Systems LLC, Reston, VA; Aspen Consulting Group, Manasquan, NJ; AVANTech Inc., Columbia, SC; Institute for Building Technology and Safety (IBTS), Ashburn, VA; Sentrana, Arlington, VA; Phase Sensitive Innovations, Inc., Newark, DE; Technology Unlimited Group, San Diego, CA; University of Arizona—Electrical and Computer Engineering, Tucson, AZ; IJK Controls LLC, Dallas, TX; IMSAR LLC, Springville, UT; Pareto Frontier, LLC, Westford, MA; Bear Systems, Boulder, CO; Vectrona, LLC, Virginia Beach, VA; Indiana Tool & Mfg. Co., Inc. DBA ITAMCO, Plymouth, IN; Ball Aerospace & Technologies Corp., Fairborn, OH; Beatty and Company Computing, Inc., Southlake, TX; Sprint Solutions, Inc., Overland Park, KS; GreenSight Agronomics, Inc., Boston, MA; MixComm, Inc., Chatham, NJ; NTS Technical Systems, Calabases, CA; Ultra Communications, Inc., Vista, CA; MW Ventures LLC, DBA Social Mobile, Miami, FL; Paul Christoforou DBA Lociva, Haymarket, VA; Rodriguez, Jonathan, La Habra, CA; Garou Inc., New York, NY; CIPHIR–TM, LLC, Albany, OR; Corner Alliance, Inc., Washington, DC; IAI, LLC, Chantilly, VA; InCadence Strategic Solutions, Manassas, VA; NetApp, Inc., Sunnyvale, CA; Peregrine Technical Solutions, LLC, Yorktown, VA; W5 Technologies, Inc., Scottsdale, AZ; AuresTech Inc., Tewksburg, MA; Electronic Design and Development Corp. (ED2), Tucson, AZ; HawkEye 360, Inc., Herndon, VA; MegaWave Corp., Worcester, MA; NorthWest Research Associates, Inc., Redmond, WA; Pi Radio Inc., Brooklyn, NY; QuayChain, Inc., San Pedro, CA; Sentar, Inc., Huntsville, AL; TrustComm, Inc., Stafford, VA; B23, LLC, Tysons, VA; SSC Innovations, Vienna, VA; Signal Hound, Inc., La Center, WA; IFS North America, Inc., Chicago, IL; AVT Simulation, Orlando, FL; Trilogy Networks, Boulder, CO; Comsearch, Ashburn, VA; AirV Labs, Inc., Champaign, IL; AnTrust, Columbia, MD, Aegis Systems, Inc., New York, NY; Concurrent Technologies Corp., Johnstown, PA; Connected Devices LLC, Chapel Hill, NC; Knowledge Management, Inc., Tyngsboro, MA; NxGen Partners Manager LLC, Dallas, TX; Spectral Labs Incorporated, San Diego, CA; Thinklogical LLC, Milford, CT; University at Buffalo, Amherst, NY; PAE Applied Technologies, Fort Worth, TX; The University of Texas at Dallas, Richardson, TX; ReFirm Labs, Inc., Fulton, MD; Amentum Services, Inc., Germantown, MD; CesiumAstro, Austin, TX; PlusN LLC, Elmsford, NY; MedCognition, Inc., San Antonio, TX; NetObjex, Inc., Santa Ana, CA; Novaa, Ltd., Dublin, OH; SRC, Inc., North Syracuse, NY; University of Illinois, Urbana, IL; Wyle Laboratories, Inc., Huntsville, AL; The Kenjya-Trusant Group LLC, Columbia, MD; Rivada Networks LLC, Colorado Springs, CO; Northern Arizona University, Flagstaff, AZ; Device Solutions, Inc., Hillsborough, NC; Peraton, Inc., Herndon, VA; GenOne Technologies LLC, Cambridge, MA; DataRobot, Inc., Boston, MA; General Radar Corp., Belmont, CA; Gonzaga University, Spokane, WA; Silent Partner International, Inc., Riverview, FL; ORSA Technologies LLC, Sierra Vista, AZ; Pn Automation, Inc., Haltehorpe, MD; Prizm XR, Inc., Cold Spring, NY; Kutta Technologies, Inc., Phoenix, AZ; Trex Enterprises Corp., San Diego, CA; OmniMesh Technologies, Inc., Syracuse, NY; Ewing Engineered Solutions, Allen, TX; DT Professional Services LLC, Canoga Park, CA; MicroStrategy, Tysons, VA; Titan Systems LLC, Lexington Park, MD; SIEGE Technologies, Chantilly, VA; Summation Research, Inc., Melbourne, FL; Waterleaf International LLC, Fort Myers, FL; Taurean General Services, Inc., Boerne, TX; Artesion, Inc., Tacoma, WA; Blue Danube Systems, Inc., Santa Clara, CA; BTAS, Inc., Beavercreek, OH; Cirrus360 LLC, Richardson, TX; CNF Technologies, San Antonio, TX; Conductive Composites Company, Heber City, UT; GATR Technologies, Huntsville, AL; General Dynamics Information Technology, Inc., Falls Church, VA; Granite Telecommunications LLC, Mclean, VA; Hanwha International LLC, Arlington, VA; Innovative Power LLC, Sterling, VA; NetNumber, Inc., Lowell, MA; NVIDIA Corp., Santa Clara, CA; Pacific Antenna Systems LLC, Camarillo, CA; Rafael Systems Global Sustainment LLC, Bethesda, MD; James River Design and Manufacturing LLC, North Chesterfield, VA; L3 Technologies, Inc. Communications Systems—East, Camden, NJ; Lumen Tech, Herndon, VA; Medivis, Inc., New York, NY; Metawave Corp., Carlsbad, CA; Ravenswood Solutions, Fremont, CA; Red Hat Professional Consulting, Inc., Raleigh, NC; Strategic Data Systems, Inc., Keller, TX; Stratom, Inc., Boulder, CO; Synoptic Engineering LLC, Arlington, VA; Tilson Technology Management, Inc., Portland, ME; Two Six Labs LLC, Arlington, VA; UI Labs DBA MxD USA, Chicago, IL; University of Oklahoma, Normon, OK; University of Washington, Seattle, WA; Vision Engineering Solutions, Inc., Merritt Island, FL; Edaptive Computing, Inc., Dayton, OH; Envistacom LLC, Atlanta, GA; L3 Technologies, San Diego, CA; M3 Defense Consulting LLC, Sterling Heights, MI; Mobilestack, Inc., Dublin, CA; Undergrid Networks, Inc., Atlanta, GA; Kopis Mobile LLC, Flowood, MS; Baker Street Scientific, Inc., Marietta, GA; Bridge 12 Technologies, Inc., Framingham, MA; Ascension Engineering Group LLC, Colorado Springs, CO; Ciena Government Solutions, Inc., Hanover, MD; Everactive, Inc., Santa Clara, CA; Zin Solutions, Inc. DBA Axiom Towers, Tulsa, OK; Sertainty Corp., Nashville, TN; Spectrum Center Government Services LLC, McLean, VA; Pinnacle Solutions, Inc., Huntsville, AL; Global Technical Systems, Virginia Beach, VA; RPI Group, Inc., Fredericksburg, VA; Encryptor, Inc., Plano, TX; Applied

Technology, Inc., King George, VA; LAINE Technologies, Goose Creek, SC; AlphaPixel LLC, Evergreen, CO; KinetX, Inc., Tempe, AZ; M2 Technology, Inc., San Antonio, TX; Onclave Networks, Inc., McLean, VA; Aqsacom Incorporated, Irving, TX; Capstone Partners, Inc., Lancaster, PA; TurbineOne LLC, San Francisco, CA; Wind Talker Innovations, Inc., Fife, WA; Aurotech LLC, Silver Spring, MD; Micron Technology, Inc., Seattle, WA; Exyn Technologies, Philadelphia, PA; Axellio, Inc., Colorado Springs, CO; Spectrum Bullpen LLC, Palm Bay, FL; Capraro Technologies, Inc., Utica, NY; Coda Octopus Colmek, Murray, UT; Consolidated Resource Imaging LLC, Grand Rapids, MI; Opto-Knowledge Systems, Inc., Torrance, CA; Adsys Controls, Inc., Irvine, CA; Amazon Web Services, Inc., Seattle, WA; Associated Universities, Inc., Washington, DC; BlackHorse Solutions, Inc., Herndon, VA; Broadband Antenna Tracking Systems, Inc., Indianapolis, IN; Carolina Microwave Associates, Inc., Cowpens, SC; CellAntenna Corp., Coral Springs, FL; COMSovereign Holding Corp., Tucson, AZ, Comtech Mobile Datacom Corp., Germantown, MD; Dell Federal Systems L.P., Round Rock, TX; Emerging Technology Ventures, Inc., Alamogordo, NM; Enveil Inc., Fulton, MD; EPIC Scientific, Spring Lake Heights, NJ; Epirus, Inc., Hawthorne, CA; Gigamon, Inc., Santa Clara, CA; Insight Public Sector, Tempe, AZ; JANUS Research Group LLC, Evans, GA; Microsoft Corp., Redmond, WA; Mobile Frontiers LLC, Vienna, VA; NextGen Federal Systems LLC, Morgantown, WV; Northeast Information Discovery LLC, Canastota, NY; Otava, Inc., Moorestown, NJ; Palo Alto Networks Public Sector LLC, Reston, VA; Pennsylvania State University—Applied Research Laboratory, State College, PA; PTC, Boston, MA; Radiall USA, Inc., Tempe, AZ; Ribbon Communications, Plano, VA; Signal Point Systems, Inc., Kennesaw, GA; Spectronn, Holmdel, NJ; Splunk, Inc., San Francisco, CA; Swim.ai, Inc., Campbell, CA; University of Texas at San Antonio, San Antonio, TX; Vitruvian Labs LLC, Havre De Grace, MD; Catholic University of America, Washington, DC; Premier LogiTech LLC, Coppell, TX; Starry, Inc. Boston, MA; and US Ignite, Inc., Washington, DC, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 23, 2014, NSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 4, 2014 (79 FR 65424).

The last notification was filed with the Department on April 5, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 12, 2023 (88 FR 38096).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22231 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rust Foundation

Notice is hereby given that, on July 19, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Rust Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Spruce Systems, Inc., New York, NY; and Turbofish, Inc., Austin, TX, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rust Foundation intends to file additional written notifications disclosing all changes in membership.

On April 14, 2022, Rust Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on May 12, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38535).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22228 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on July 19, 2023 pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Silicon Integration Initiative, Inc. (''Si2'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Rapidus Corporation, Chiyoda-ku, Tokyo, JAPAN; and HW21 Org Limited, San Francisco, CA have been added as parties to this venture. Also, Mythic, Inc., Austin, TX; and Raytheon Technologies Corporation, Andover, MA have withdrawn as parties to this venture. Additionally, TexEDA Design GmbH, Brandenburg, GERMANY has changed its name to Silicon Radar.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Si2 intends to file additional written notifications disclosing all changes in membership.

On December 30, 1988, Si2 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on April 13, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29378).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–22233 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Crime Victims' Rights Act Complaint Form

AGENCY: Executive Office for United States Attorneys, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office of the Victims' Rights Ombuds, Executive Office for United States Attorneys (EOUSA), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on August 2, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 6, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Ellen FitzGerald, Victims' Rights Ombudsman, Executive Office for United States Attorneys, 950 Pennsylvania Avenue NW, Room 2261, Washington, DC 20530 (Email: *USAEO.RegulatoryComments@usdoj.gov* or telephone: 202–252–1010).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* Crime Victims' Rights Act Complaint Form.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Not applicable.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households.

Abstract: The Crime Victims' Rights Act of 2004, 18 U.S.C. 3771 (CVRA), sets forth the rights of a federal crime victim to file a complaint against any Department of Justice employee who violated or failed to provide rights established under the CVRA. The Department of Justice has created the Office of the Victims' Rights Ombudsman to receive and investigate complaints filed by federal crime victims against its employees and has implemented ''Procedures to Promote Compliance with Crime Victims' Rights Obligations,'' 28 CFR 45.10. The complaint process is not designed for the correction of specific victims' rights violations but is instead used to request corrective or disciplinary action against Department of Justice employees who may have failed to provide rights to crime victims. The Department of Justice will investigate the allegations in the complaint to determine whether the employee used his or her ''best efforts'' to provide crime victim rights. The Office of the Crime Victims' Rights Ombudsman does not administer crime victim funds or provide services.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 100.

7. *Estimated Time per Respondent:* 45 minutes.

8. *Frequency:* Once/annually.

9. *Total Estimated Annual Time Burden:* 75 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: September 29, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–22101 Filed 10–4–23; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 29, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Tennessee in the lawsuit entitled *United States and the State of Tennessee* v. *Hamilton County Water and Wastewater Treatment Authority,* Civil Action No. 23–cv–00225.

The United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), and the State of Tennessee filed this lawsuit under the Clean Water Act and Tennessee State law. The complaint seeks penalties and injunctive relief alleging that the Defendant discharged to waters of the United States without an NPDES Permit and violated the operations and maintenance conditions of its NPDES permit and, for our co-plaintiff State of Tennessee, violated Tennessee state laws. The proposed Consent Decree secures injunctive relief at Hamilton County's wastewater treatment plant and collection and transmission systems primarily focused on eliminating sanitary sewer overflows and bypasses at the treatment plant. WWTA must pay a civil penalty of $598,490, split evenly between the United States and the State of Tennessee.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Tennessee* v. *Hamilton County Water and Wastewater Treatment Authority,* D.J. Ref. No. 90–5–1–1–11394. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $61.50 (25 cents per page reproduction cost), payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2023–22152 Filed 10–4–23; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–103]

NASA Federal Advisory Committees; Charter Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of charter renewal for NASA Federal advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that renewal of the charter of NASA Advisory Council is in the public interest in connection with the performance of duties imposed on NASA by law. The renewed charter is for a two-year period ending September 30, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Diane Rausch, NASA Advisory Committee Management Officer, NASA Headquarters, Washington, DC 20546; 202–358–4510 or *diane.rausch@nasa.gov.*

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–22221 Filed 10–4–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 211th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held open to the public by videoconference. Additional sessions will be closed to the public for reasons stated below.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is located in Eastern time and the ending time is approximate.

ADDRESSES: The National Endowment for the Arts, Constitution Center, 400 Seventh Street SW, Washington, DC 20560. This meeting will be held by videoconference. Public portions of the meeting will be webcast. Please see *arts.gov* for the most up-to-date information.

FOR FURTHER INFORMATION CONTACT: Liz Auclair, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202–682–5744.

SUPPLEMENTARY INFORMATION: The meeting will take place on October 26 and 27, 2023. The meeting on October 27, 2023, from 10 a.m. to 11:30 a.m., will be open to the public by videoconference. If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the March 11, 2022 determination of the Chair. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b. The meeting session that occurs on October 26, 2023 will be closed to the public for the aforementioned reasons.

Detailed Meeting Information

Closed Session: October 26, 2023; 9:30 a.m. to 4 p.m. Location: Videoconference. The Council will discuss nominations submitted for the National Medal of Arts.

Open Session: October 27, 2023; 10 a.m. to 11:30 a.m. Location: Videoconference. There will be opening remarks and voting on recommendations for grant funding and rejection, updates from NEA Chair Maria Rosario Jackson, and presentations from the NEA's Office of Research and Analysis. This session will be held open to the public by videoconference. To view the webcasting of this open session of the meeting, go to: *https://www.arts.gov/.* If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506, 202–682–5733, Voice/T.T.Y. 202–682–5496, at least seven (7) days prior to the meeting.

Dated: September 29, 2023.

Daniel Beattie,

Director, Office of Guidelines and Panel Operations.

[FR Doc. 2023–22111 Filed 10–4–23; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445, 50–446, 72–74, 50–334, 50–412, 72–1043, 50–346, 72–14, 50–440, and 72–69; NRC–2023–0100]

In the Matter of Vistra Operations Company LLC; Energy Harbor Nuclear Corp.; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Beaver Valley Power Station, Unit Nos. 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; Perry Nuclear Power Plant, Unit No. 1; and the Associated Independent Spent Fuel Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct and indirect transfer of licenses, order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the application filed by Vistra Operations Company LLC (VistraOps) and Energy Harbor Nuclear Corp. (collectively, the applicants) on April 14, 2023, as supplemented by letters dated April 20, 2023, August 7, 2023, and September 12, 2023. Specifically, the order approves the direct and indirect transfer of the facility operating licenses and general licenses held by the applicants and conforming amendments to the licenses related to VistraOps indirectly acquiring Energy Harbor Corp. and its subsidiaries and restructuring the upstream ownership of Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2.

DATES: The order was issued on September 28, 2023, and is effective for 1 year.

ADDRESSES: Please refer to Docket ID NRC–2023–0100 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0100. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The order, the NRC staff safety evaluation, and the draft conforming amendments are available in ADAMS under Package Accession No. ML23237B448.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Kuntz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3733; email: *Robert.Kuntz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: September 29, 2023.

For the Nuclear Regulatory Commission.

Robert F. Kuntz,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Direct and Indirect Transfer of Licenses Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Beaver Valley Power Station, Unit Nos. 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; Perry Nuclear Power Plant, Unit No. 1; and the Associated Independent Spent Fuel Storage Installations

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of: VISTRA OPERATIONS COMPANY LLC, COMMANCHE PEAK POWER COMPANY LLC, ENERGY HARBOR NUCLEAR CORP., AND ENERGY HARBOR NUCLEAR GENERATION LLC; (Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Beaver Valley Power Station, Unit Nos. 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; Perry Nuclear Power Plant, Unit No. 1; and the Associated Independent Spent Fuel Storage Installations)

Docket Nos. 50–445, 50–446, 72–74, 50–334, 50–412, 72–1043, 50–346, 72–14, 50–440, and 72–69

License Nos. NFP–87, NFP–89, DPR–66, NPF–73, NPF–3, and NPF–58

ORDER APPROVING DIRECT AND INDIRECT TRANSFER OF LICENSES AND DRAFT CONFORMING LICENSE AMENDMENTS

I.

This order pertains to the following licenses (collectively, the Licenses):

- Facility Operating License Nos. NFP–87 and NFP–89 for Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2 (Comanche Peak), respectively, and the general license for the associated independent spent fuel storage installation (ISFSI). Comanche Peak is located in Somervell County, Texas, and Vistra Operations Company LLC (VistraOps) and Comanche Peak Power Company LLC (CPPC) are the licensees.
- Renewed Facility Operating License Nos. DPR–66 and NPF–73 for Beaver Valley Power Station, Unit Nos. 1 and 2 (Beaver Valley), respectively, and the general license for the associated ISFSI. Beaver Valley is located in Beaver County, Pennsylvania, and Energy Harbor Nuclear Corp. (EHNC) and Energy Harbor Nuclear Generation LLC (EHNG) are the licensees.
- Renewed Facility Operating License No. NPF–3 for Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse) and the general license for the associated ISFSI. Davis-Besse is located in Ottawa County, Ohio, and EHNC and EHNG are the licensees.
- Facility Operating License No. NPF–58 for Perry Nuclear Power Plant, Unit No. 1 (Perry) and the general license for the associated ISFSI. Perry is located in Lake County, Ohio, and EHNC and EHNG are the licensees.

II.

By application dated April 14, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23104A423), as supplemented by letters dated April 20, 2023 (ML23110A788), August 7, 2023 (ML23219A106), and September 12, 2023 (ML23255A061), VistraOps, on behalf of itself, CPPC and certain other affiliates, and EHNC, acting on behalf of itself and EHNG (collectively, the Applicants), requested, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the Act), and Title 10 of the *Code of Federal Regulations* (10 CFR) sections 50.80, ''Transfer of licenses,'' and 72.50, ''Transfer of license,'' that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the direct and indirect transfer of control of the Licenses.

Specifically, the application requests that the NRC consent to the license

transfers resulting from a proposed transaction, as further described in a Transaction Agreement, pursuant to which VistraOps will acquire Energy Harbor Corp. (EHC) and its subsidiaries and will restructure the upstream ownership of Comanche Peak. As part of the proposed transaction, EHNC's and EHNG's parent, EHC, will become an indirect subsidiary of VistraOps via merger (such indirect subsidiary that will survive the merger is referred to herein as VOC Sub). Following such merger, VOC Sub's indirect parent company, tentatively referred to as Special Purpose Entity 2 LLC (Vistra Vision), will be indirectly owned and controlled by VistraOps, which will have an 85 percent ownership interest in Vistra Vision, and the remaining 15 percent ownership interest will be held by certain former shareholders of EHC, accounts managed by Avenue Capital Management II, L.P. and Nuveen Asset Management, LLC, and potentially certain other investors. As a result of the proposed transaction, EHNC and EHNG will become indirect subsidiaries of VistraOps. For business and tax purposes, the proposed transaction will also create three new indirect subsidiaries of VistraOps between VistraOps and CPPC, resulting in an indirect transfer of control of the Comanche Peak licenses.

Pursuant to 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit,'' the application also requests conforming amendments to the Licenses to reflect the proposed transfer.

On May 22, 2023, the NRC published a notice of consideration of approval of the application in the **Federal Register** (88 FR 32807). This notice provided an opportunity to comment, request a hearing, and petition for leave to intervene on the application. No requests for hearing or public comments were received.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Pursuant to 10 CFR 72.50, no license or any part included in a license issued under 10 CFR part 72 for an ISFSI shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, as supplemented, and other information before the Commission, the NRC staff has determined that VistraOps is qualified to hold the Licenses to the extent proposed in the application, as supplemented, and that transfer of the Licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions set forth below.

Upon review of the application, as supplemented, for conforming license amendments to reflect the transfer, the NRC staff has determined that:

(1) The application, as supplemented, complies with the standards and requirements of the Act and the Commission's rules and regulations set forth in 10 CFR chapter I.

(2) The facilities will operate in conformity with the application, as supplemented, the provisions of the Act, and the rules and regulations of the Commission.

(3) There is reasonable assurance that the activities authorized by the amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations.

(4) The issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

(5) The issuance of the amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by an NRC staff safety evaluation dated the same date as this order, which is available at ADAMS Accession No. ML23237B430 (non-proprietary).

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 50.90, *it is hereby ordered* that the license transfer application, as described herein, is approved, subject to the following conditions:

1. At least 5 business days before the closing of the proposed transaction, the Applicants shall submit, under oath or affirmation, the following information to the NRC in accordance with 10 CFR part 50: the names, addresses, and citizenship of the directors and principal officers of Special Purpose Entity 1 LLC, Special Purpose Entity 2 LLC, Special Purpose Entity 3 LLC, and Special Purpose Entity 2 LLC Managing Member LLC.

2. VistraOps shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Reactor Regulation that, as of the date of the license transfer, the licensees reflected in the amended licenses have obtained the appropriate amount of insurance required of a licensee under 10 CFR part 140 and 10 CFR 50.54(w).

It is further ordered that after receipt of all required regulatory approvals of the proposed license transfer, the Applicants shall inform the Directors of the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards in writing of such receipt no later than 5 business days prior to the date of the closing of the proposed transaction. Should the proposed transaction not be completed within 1 year of the date of this order, this order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order. The conditions of this order may be amended upon application by the Applicants and approval by the NRC.

It is further ordered that consistent with 10 CFR 2.1315(b), the license amendments that make changes, as indicated in Enclosure 2 to the letter forwarding this order, to reflect the subject license transfer, are approved. The amendments shall be issued and made effective at the time the proposed transfer actions are completed.

This order is effective upon issuance.

For further details with respect to this order, see the application dated April 14, 2023, as supplemented by letters dated April 20, 2023, August 7, 2023, and September 12, 2023, and the associated NRC staff safety evaluation dated the same date as this order. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated: September 28, 2023.

For the Nuclear Regulatory Commission.

/RA Michael King for/

Andrea D. Veil,

Director, Office of Nuclear Reactor Regulation.

/RA Robert Lewis for/

John W. Lubinski,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–22135 Filed 10–4–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–285 and CP2023–288]

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:* October 6, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–285 and CP2023–288; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 68 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 6, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–22112 Filed 10–4–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail 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:* October 5, 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 26, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 787 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–284, CP2023–287.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–22142 Filed 10–4–23; 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:* October 5, 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 25, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 9 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–283, CP2023–286.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–22141 Filed 10–4–23; 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.

[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).

DATES: *Date of required notice:* October 5, 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 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 65 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–280, CP2023–283.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–22137 Filed 10–4–23; 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:* October 5, 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 25, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 67 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–282, CP2023–285.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–22139 Filed 10–4–23; 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:* October 5, 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 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 64 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–279, CP2023–282.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–22136 Filed 10–4–23; 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:* October 5, 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 28, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 68 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–285, CP2023–288.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–22140 Filed 10–4–23; 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:* October 5, 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 25, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 66 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–281, CP2023–284.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–22138 Filed 10–4–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No.: 34–98672]

Public Availability of the Securities and Exchange Commission's Fiscal Year (FY) 2020 Service Contract Inventory

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: In accordance with section 743 of division C of the Consolidated Appropriations Act of 2010, the SEC is publishing this notice to advise the public of the availability of the FY2020 Service Contract Inventory (SCI) along with the FY2021 SCI Planned Analysis.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding the service contract inventory to Vance Cathell, Director Office of Acquisitions 202.551.8385 or *CathellV@sec.gov.*

SUPPLEMENTARY INFORMATION: The SCI provides information on FY2020 actions over $150,000 for service contracts. The inventory organizes the information by function to show how SEC distributes contracted resources throughout the

agency. The SEC developed the inventory per the guidance issued on January 17, 2017, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/service_contract_inventories.pdf.*

The Service Contract Inventory Analysis for FY2020 provides information based on the FY 2020 Inventory. Please note that the SEC's FY 2020 Service Contract Inventory data is now included in government-wide inventory available on *https://www.acquisition.gov.* The government-wide inventory can be filtered to display the inventory data for the SEC. The SEC has posted the FY 2020 SCI Analysis and its FY 2021 plans for analyzing data on the SEC's homepage at *https://www.sec.gov/about/secreports.shtml* and *https://www.sec.gov/open.*

Dated: October 2, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–22192 Filed 10–4–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–155, OMB Control No. 3235–0123]

Submission for OMB Review; Comment Request; Extension: Rule 17a–5

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 17a–5 (17 CFR 240.17a–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) is the basic financial reporting rule for brokers and dealers.[1] The rule requires the filing of Form X–17A–5, the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The rule also requires the filing of annual reports, which include a financial report and a compliance or exemption report as well as reports of an independent public accountant covering the financial report and the compliance or exemption report. In addition, the rule requires a broker-dealer that computes certain capital charges in accordance with Appendix E to Exchange Act Rule 15c3–1 (17 CFR 240.15c3–1e) to file additional monthly or quarterly reports and a supplemental report on management controls concurrently with its annual reports.

The Commission estimates that the total hour burden under Rule 17a–5 is approximately 397,467 hours per year, and the total cost burden is approximately $31,295,048 per year. Since the last approval of this information collection, the estimated total burden hours per year has increased due to more respondents filing monthly reports rather than quarterly reports under Rule 17a–5; the estimated total cost burden per year has decreased due to more filings being submitted electronically.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by November 6, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 2, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22190 Filed 10–4–23; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 17a–5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235–0199).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–424, OMB Control No. 3235–0473]

Submission for OMB Review; Comment Request; Extension: Rule 17Ad–3(b)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–3(b) (17 CFR 240.17Ad–3(b)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–3(b) requires registered transfer agents to send a copy of the written notice required under Rules 17Ad–2(c), (d), and (h) to the chief executive officer of each issuer for which the transfer agent acts when it has failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a), or to process at least 75% of all items in accordance with the requirements of Rule 17Ad–2(b), for two consecutive months. The issuer may use the information contained in the notices: (1) as an early warning of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents; and (2) to become aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's issues. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards, then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items for two consecutive months.

The Commission estimates that only one transfer agent will be subject to the third-party disclosure requirements of

Rule 17Ad–3(b) each year. If a transfer agent fails to meet the turnaround and processing requirements under 17Ad–3(b), it would simply send its issuer-clients a copy of the notice that had already been produced for the Commission pursuant to Rule 17Ad–2(c) or (d). The Commission estimates the requirement will take the transfer agent approximately four hours to complete. The total estimated burden associated with Rule 17Ad–3(b) is thus approximately 4 hours per year. The Commission estimates that the internal compliance cost for the transfer agent to comply with this third-party disclosure requirement will be approximately $1,128 per year (4 hours × $283 per hour = $1,128). The total estimated internal cost of compliance associated with Rule 17Ad–3(b) is thus approximately $1,128 per year. There are no external costs associated with sending the notice to issuer-clients.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by November 6, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: October 2, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22187 Filed 10–4–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–148, OMB Control No. 3235–0133]

Submission for OMB Review; Comment Request; Extension: Rule 17a–19 and Form X–17A–19

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–19 requires every national securities exchange and registered national securities association to file a Form X–17A–19 with the Commission and the Securities Investor Protection Corporation (''SIPC'') within 5 business days of the initiation, suspension, or termination of any member and, when terminating the membership interest of any member, to notify that member of its obligation to file financial reports as required by Exchange Act Rule 17a–5(b).[1] There are currently a total of 25 national securities exchanges and registered national securities associations that are potential respondents under the rule.

Commission staff anticipates that the national securities exchanges and registered national securities associations collectively will make 420 total filings annually pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total reporting burden is estimated to be approximately 105 total annual hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by November 6, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

[1] 17 CFR 240.17a–5(b).

Dated: October 2, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22186 Filed 10–4–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20006 and #20007; UTAH Disaster Number UT–20000]

Administrative Declaration of a Disaster for the State of Utah

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Utah dated 10/02/2023.

Incident: Severe Thunderstorms and Flooding.

Incident Period: 08/03/2023 through 08/04/2023.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 12/01/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2024.

ADDRESSES: Submit completed paper 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 Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. 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 a paper loan application.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Salt Lake.

Contiguous Counties:

Utah: Davis, Morgan, Summit, Tooele, Utah, Wasatch.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500

	Percent
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Business and 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 200066 and for economic injury is 200070.

The State which received an EIDL Declaration is Utah.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–22215 Filed 10–4–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18211 and #18212; LA JOLLA BAND OF LUISENO INDIANS Disaster Number CA–00389]

Presidential Declaration of a Major Disaster for Public Assistance Only for the La Jolla Band of Luiseno Indians

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 La Jolla Band of Luiseno Indians (FEMA–4743–DR), dated 09/27/2023.

Incident: Tropical Storm Hilary.

Incident Period: 08/19/2023 through 08/21/2023.

DATES: Issued on 09/27/2023.

Physical Loan Application Deadline Date: 11/27/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/27/2024.

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 09/27/2023, 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 Area: La Jolla Band of Luiseno Indians.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18211 8 and for economic injury is 18212 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–22205 Filed 10–4–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18213 and #18214; PENNSYLVANIA Disaster Number PA–00138]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 10/02/2023.

Incident: Severe Storms and Flash Flooding.

Incident Period: 07/15/2023 through 07/16/2023.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 12/01/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2024.

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 Administrator's disaster declaration, 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: Northampton.

Contiguous Counties:

Pennsylvania: Bucks, Carbon, Lehigh, Monroe.

New Jersey: Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
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
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18213 6 and for economic injury is 18214 0.

The States which received an EIDL Declaration # are New Jersey, Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–22214 Filed 10–4–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18209 and #18210; TENNESSEE Disaster Number TN–00152]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Tennessee

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 Tennessee (FEMA–4742–DR), dated 09/27/2023.

Incident: Severe Storms, Straight-line Winds, and Tornado.

Incident Period: 08/07/2023.

DATES: Issued on 09/27/2023.

Physical Loan Application Deadline Date: 11/27/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/27/2024.

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 09/27/2023, 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: Bledsoe, Coffee, Cumberland, Jefferson, Knox, Loudon, Meigs, Rhea, Roane, Van Buren.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18209 B and for economic injury is 18210 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–22209 Filed 10–4–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12205]

Notice of Department of State Sanctions Actions

SUMMARY: The Department of State is publishing the names of one or more persons that have been placed on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List) administered by the Office of Foreign Asset Control (OFAC) based on the Department of State's determination, in consultation with other departments, as appropriate, that one or more applicable legal criteria of Executive Order (''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation'') were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: Aaron P. Forsberg, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *ForsbergAP@state.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning sanctions programs are available on OFAC's website.

Notice of Department of State Actions

On September 14, 2023, the Department of State, in consultation with other departments, as appropriate, determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4710–AE–P

Individuals

1. SAFYANOV, Yuri Pavlovich (Cyrillic: САФЬЯНОВ, Юрий Павлович) (a.k.a. SAFIANOV, Iurii Pavlovich; a.k.a. SAFYANOV, Yury Pavlovich), Murmansk, Russia; DOB 22 May 1976; POB Magadan, Russia; nationality Russia; Gender Male; Passport 720175005 (Russia); National ID No. 4400036893 (Russia) (individual) [RUSSIA-EO14024] (Linked To: ARCTIC TRANSSHIPMENT LIMITED LIABILITY COMPANY).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of, ARCTIC TRANSSHIPMENT LIMITED LIABILTY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. ALTUSHKIN, Igor Alekseevich (Cyrillic: АЛТУШКИН, Игорь Алексеевич), Russia; DOB 10 Sep 1970; POB Ekaterinburg, Russia; nationality Russia; Gender Male; Tax ID No. 770470510081 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

3. DOGRUYOL, Ilker (Latin: DOĞRUYOL, İlker), A3 Blok D 21 Cinarlibahce Sitesi Istasyon Mah. Tuzla, Istanbul, Turkey; DOB 13 Aug 1987; POB Rize, Turkey; nationality Turkey; Gender Male; Passport U22817494 (Turkey); National ID No.

66481078808 (Turkey) (individual) [RUSSIA-EO14024] (Linked To: ID SHIP AGENCY TRADE LIMITED COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been the leader, official, senior executive officer, or member of the board of directors of, ID SHIP AGENCY TRADE LIMITED COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. PARTSKHALADZE, Otar Anzorovich (Cyrillic: ПАРЦХАЛАДЗЕ, Отар Анзорович) (a.k.a. PHARTSKHALADZE, Otar (Georgian: ფარცხალაძე, ოთარ)), Georgia; DOB 18 Jun 1976; POB Tbilisi, Georgia; nationality Georgia; alt. nationality Russia; Gender Male; Passport 11BA33281 (Georgia); National ID No. 01008013231 (Georgia); Tax ID No. 710000237020 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

5. ONISHCHENKO, Aleksandr Vladimirovich (Cyrillic: ОНИЩЕНКО, Александр Владимирович), Moscow, Russia; DOB 15 Dec 1978; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

Entities

1. JSC ENERGIES (Cyrillic: АО ЭНЕРДЖИС) (f.k.a. AKTSIONERNOE OBSHCHESTVO TEKNIP ENERDZHIS RUS; f.k.a. TEKNIP RUS AO (Cyrillic: ТЕКНИП РУС АО)), d. 266 str. 1 pom. 8.1-N.152, 8 etazh, prospekt Ligovski, St. Petersburg 196006, Russia; Tax ID No. 7810913731 (Russia); Registration Number 1027810258882 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the architecture sector of the Russian Federation economy.

2. NOVA ENERGIES LIMITED LIABILITY COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НОВА ЭНЕРДЖИС), 15A Leninskiy Avenue, Moscow 119071, Russia; Tax ID No. 7736291457 (Russia); Registration Number 1177746174165 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the engineering sector of the Russian Federation economy.

3. LIMITED LIABILITY COMPANY ARCTIC ENERGIES (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АРКТИК ЭНЕРДЖИС), Land Plot 1, Mezhdurechye np., Territory of Advanced Development Stolitsa Arktiki, Kolskiy District, Murmansk Region 184363, Russia; Tax ID No. 5105013824 (Russia); Registration Number 1205100005329 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

4. GREEN ENERGY SOLUTIONS PROJECT MANAGEMENT SERVICES SOLE PROPRIETORSHIP LLC (Arabic: جرين انرجي سليو شنس لخدمات أدارة المشاريع شركة الشخص الواحد ذ.ز.م) East 40 Al Sa'adah, Abu Dhabi, United Arab Emirates; Identification Number 11899598 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the engineering sector of the Russian Federation economy.

5. ARCTIC TRANSSHIPMENT LIMITED LIABILITY COMPANY (Cyrillic: АРКТИЧЕСКАЯ ПЕРЕВАЛКА ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ) (a.k.a. LLC ARKTICHESKAYA PEREVALKA; a.k.a. LLC NOVATEK ZAPADNAYA ARKTIKA), 59 Leninskaya Street, Office 705,

Petropavlovsk-Kamchatskiy, Kamchatskiy Territory 683001, Russia; Spolokhi Street, Building 4A, Floor 4, Room 14, Murmansk, Murmansk Region 183025, Russia; Tax ID No. 5190080642 (Russia); Registration Number 1195190002875 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the marine sector of the Russian Federation economy.

6. LIMITED LIABILITY COMPANY CARBON (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КАРБОН) (a.k.a. LIMITED LIABILITY COMPANY KARBON; f.k.a. NOVAPORT TSENTRALNAYA AZIYA OOO), d. 3A str. 6 etazh 1 pom. 21, ul. 1-Ya Frunzenskaya, Moscow 119146, Russia; Tax ID No. 7704493235 (Russia); Registration Number 1197746372735 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

7. UNITED ARCTIC COMPANY LLC (Cyrillic: ОБЪЕДИНЕННАЯ АРКТИЧЕСКАЯ КОМПАНИЯ ООО) (a.k.a. OOO OBEDINENNAYA ARKTICHESKAYA KOMPANIYA), d. 3 str. 1 etazh 3 kom. 6, per. Kapranova, Moscow 123242, Russia; Tax ID No. 9703047986 (Russia); Registration Number 1217700432212 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY CARBON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, LIMITED LIABILITY COMPANY CARBON, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. LLC VU DIKSON (Cyrillic: ООО ВУ ДИКСОН) (a.k.a. OOO VOSTOKUGOL DIKSON), ul. Voronina 2A Pgt., Dikson 647340, Russia; Tax ID No. 2469003640

(Russia); Registration Number 1172468032549 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. LIMITED LIABILITY COMPANY ARKTIK LOGISTIK (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АРКТИК ЛОГИСТИК), d. 4A etazh 1 pom. I, Kom. 3, Ofis 25-4, ul. Kutuzovskaya, Odintsovo 143001, Russia; Tax ID No. 5032265457 (Russia); Registration Number 1165032062326 (Russia) [RUSSIA-EO14024] (Linked To: LLC VU DIKSON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, LLC VU DIKSON, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. LIMITED LIABILITY COMPANY TAYMYRSKIE RESURSY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТАЙМЫРСКИЕ РЕСУРСЫ), d. 11 etazh 4 kab. 6, ul. Minskaya, Moscow 121108, Russia; Tax ID No. 9731007826 (Russia); Registration Number 1187746734340 (Russia) [RUSSIA-EO14024] (Linked To: LLC VU DIKSON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, LLC VU DIKSON, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. LIMITED LIABILITY COMPANY RAZREZ LEMBEROVSKIY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РАЗРЕЗ

ЛЕМБЕРОВСКИЙ), d. 4A etazh 1 pom. I, Kom. 1, Ofis 2A, ul. Kutuzovskaya, Odintsovo 143001, Russia; Tax ID No. 5032224041 (Russia); Registration Number 1155032013377 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. LIMITED LIABILITY COMPANY POLYARNAYA GORNO RUDNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПОЛЯРНАЯ ГОРНО РУДНАЯ КОМПАНИЯ) (a.k.a. "ООО PGRK"), Usovo Village, Building 100, Block B, Floor 2, Suite 10, Odintsovo, Moscow Region 143084, Russia; Tax ID No. 7707332797 (Russia); Registration Number 1157746092745 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

13. LIMITED LIABILITY COMPANY ENERGOPROM (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЭНЕРГОПРОМ), Usovo Village, Building 100, Block B, Floor 3, Suite 5, Odintsovo, Moscow Region 143084, Russia; Tax ID No. 5032216308 (Russia); Registration Number 1155032010143 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED

ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. LIMITED LIABILITY COMPANY PYASINSKAYA GORNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПЯСИНСКАЯ ГОРНАЯ КОМПАНИЯ) (a.k.a. OOO PYASGK), str. 100 blok B etazh 3, pom. 4, Odintsovo 143084, Russia; Tax ID No. 5032216266 (Russia); Registration Number 1155032010099 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

15. LIMITED LIABILITY COMPANY DALNEVOSTOCHNAYA GORNO RUDNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ДАЛЬНЕВОСТОЧНАЯ ГОРНО РУДНАЯ КОМПАНИЯ) (a.k.a. "OOO DGRK"), d. 4A etazh 1 pom. I, Kom. 7, Ofis 12-6, ul. Kutuzovskaya, Odintsovo 143001, Russia; Tax ID No. 5032208240 (Russia); Registration Number 1155032006810 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

16. LIMITED LIABILITY COMPANY PROMBIZNES (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПРОМБИЗНЕС), str. 100 blok B etazh

2, pom. 10, Odintsovo 143084, Russia; Tax ID No. 5032208184 (Russia); Registration Number 1155032006832 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

17. LIMITED LIABILITY COMPANY KRASNOYARSKAYA ENERGETICHESKAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КРАСНОЯРСКАЯ ЭНЕРГЕТИЧЕСКАЯ КОМПАНИЯ) (a.k.a. OOO KEK), str. 100 blok B etazh 2, pom. 4, Odintsovo 143084, Russia; Tax ID No. 5032216280 (Russia); Registration Number 1155032010121 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

18. LIMITED LIABILITY COMPANY PUTORANSKAYA GORNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПУТОРАНСКАЯ ГОРНАЯ КОМПАНИЯ) (a.k.a. "OOO PGK"), str. 100 blok B etazh 2, pom. 5, Odintsovo 143084, Russia; Tax ID No. 5032216227 (Russia); Registration Number 1155032010088 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED

ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

19. LIMITED LIABILITY COMPANY OZERNAYA ENERGETICHESKAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ОЗЕРНАЯ ЭНЕРГЕТИЧЕСКАЯ КОМПАНИЯ) (a.k.a. "OOO OEK"), str. 100 blok B etazh 3, pom. 4, Odintsovo 143084, Russia; Tax ID No. 5032216322 (Russia); Registration Number 1155032010110 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

20. LIMITED LIABILITY COMPANY SIBIRSKAYA UGOLNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СИБИРСКАЯ УГОЛЬНАЯ КОМПАНИЯ) (a.k.a. OOO SIBUGOL), d. 4A etazh 1 pom. I, Kom. 14, Ofis 7D, ul. Kutuzovskaya, Odintsovo 143001, Russia; Tax ID No. 5032216202 (Russia); Registration Number 1155032010066 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

21. LIMITED LIABILITY COMPANY TAYMYRSKAYA GORNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТАЙМЫРСКАЯ ГОРНАЯ КОМПАНИЯ) (a.k.a. "OOO TGK"), d. 4A etazh 1 pom. I, Kom. 9, Ofis 13, ul. Kutuzovskaya, Odintsovo 143001,

Russia; Tax ID No. 5032216210 (Russia); Registration Number 1155032010077 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. LIMITED LIABILITY COMPANY AMURSKAYA GORNO RUDNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АМУРСКАЯ ГОРНО РУДНАЯ КОМПАНИЯ) (a.k.a. OOO AMURSKAYA GRK), d. 4A etazh 1 pom. l, Kom. 4, Ofis 4-2, ul. Kutuzovskaya, Odintsovo 143001, Russia; Tax ID No. 5032208321 (Russia); Registration Number 1155032006821 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

23. LIMITED LIABILITY COMPANY SEVERNAYA ENERGETICHESKAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СЕВЕРНАЯ ЭНЕРГЕТИЧЕСКАЯ КОМПАНИЯ) (a.k.a. "OOO SEK"), d. 4A etazh 1 pom. I, KOM. 4, OFIS 11-8, ul. Kutuzovskaya, Odintsovo 143001, Russia; Tax ID No. 5032216379 (Russia); Registration Number 1155032010176 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED

ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

24. LIMITED LIABILITY COMPANY YANSKAYA GORNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЯНСКАЯ ГОРНАЯ КОМПАНИЯ) (a.k.a. "ООО YAGK"), Usovo Village, Building 100, Block B, Floor 1, Suite 6, Odintsovo, Moscow Region 143084, Russia; Tax ID No. 7736244961 (Russia); Registration Number 1157746396191 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

25. LIMITED LIABILITY COMPANY PROMRESHENIE (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПРОМРЕШЕНИЕ), Usovo Village, Building 100, Block B, Floor 3, Suite 5, Odintsovo, Moscow Region 143084, Russia; Tax ID No. 5032216298 (Russia); Registration Number 1155032010132 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

26. LIMITED LIABILITY COMPANY POLYARNAYA ENERGETICHESKAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПОЛЯРНАЯ ЭНЕРГЕТИЧЕСКАЯ КОМПАНИЯ) (a.k.a. "ООО РЕК"), Usovo Village, Building 100, Block B, Floor 2, Suite 5, Odintsovo, Moscow Region 143084, Russia; Tax ID No. 5032216273 (Russia); Registration Number

1155032010100 (Russia) [RUSSIA-EO14024] (Linked To: UNITED ARCTIC COMPANY LLC).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, UNITED ARCTIC COMPANY LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

27. LIMITED LIABILITY COMPANY RAZREZ POLYARNIY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РАЗРЕЗ ПОЛЯРНЫЙ), str. 100 blok B etazh 1, pom. 6, Odintsovo 143084, Russia; Tax ID No. 5032231539 (Russia); Residency Number 1165032052162 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY CARBON).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, LIMITED LIABILITY COMPANY CARBON, a person whose property and interests in property are blocked pursuant to E.O. 14024.

28. LLC RUSSIAN ENERGY GROUP (Cyrillic: ООО ГРУППА РУССКАЯ ЭНЕРГИЯ) (a.k.a. OOO GRUPPA RUSSKAYA ENERGIYA; a.k.a. OOO RUSSKAYA ENERGIYA), d. 14 str. 5 etazh 1 pom. 2, per. Butikovski, Moscow 119034, Russia; Tax ID No. 7714456916 (Russia); Registration Number 1207700001486 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

29. LIMITED LIABILITY COMPANY VORKUTA MANAGEMENT COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ВОРКУТИНСКАЯ УПРАВЛЯЮЩАЯ КОМПАНИЯ), d. 62 pom. 702, ul. Lenina, Vorkuta 169908, Russia; Tax ID No. 1103046601 (Russia); Registration Number

1211100005368 (Russia) [RUSSIA-EO14024] (Linked To: LLC RUSSIAN ENERGY GROUP).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, LLC RUSSIAN ENERGY GROUP, a person whose property and interests in property are blocked pursuant to E.O. 14024.

30. LIMITED LIABILITY COMPANY ARCTICGEO (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АРКТИКГЕО), per. Denezhny 9/6, Moscow 119002, Russia; Tax ID No. 9704209069 (Russia); Registration Number 1237700286647 (Russia) [RUSSIA-EO14024] (Linked To: LLC RUSSIAN ENERGY GROUP).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, LLC RUSSIAN ENERGY GROUP, a person whose property and interests in property are blocked pursuant to E.O. 14024.

31. JSC VORKUTAUGOL (Cyrillic: АО ВОРКУТАУГОЛЬ), ul. Lenina d. 62, Vorkuta 169908, Russia; Tax ID No. 1103019252 (Russia); Registration Number 1021100807452 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

32. LIMITED LIABILITY COMPANY SEVERNAYA ALMAZNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СЕВЕРНАЯ АЛМАЗНАЯ КОМПАНИЯ) (a.k.a. LIMITED LIABILITY COMPANY NORTH DIAMOND COMPANY), d. 1 pom. 31, pl. Metallistov, Vorkuta 169901, Russia; Tax ID No. 3528130677 (Russia); Registration

Number 1073528012700 (Russia) [RUSSIA-EO14024] (Linked To: JSC VORKUTAUGOL).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JSC VORKUTAUGOL, a person whose property and interests in property are blocked pursuant to E.O. 14024.

33. LIMITED LIABILITY COMPANY UPTS VORKUTA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ УПТС ВОРКУТА), ul. Gornyakov d. 13, Vorkuta 169901, Russia; Tax ID No. 1103042163 (Russia); Registration Number 1071103004312 (Russia) [RUSSIA-EO14024] (Linked To: JSC VORKUTAUGOL).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JSC VORKUTAUGOL, a person whose property and interests in property are blocked pursuant to E.O. 14024.

34. LIMITED LIABILITY COMPANY MV (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ МВ), ul. Lenina d. 62, Vorkuta 169908, Russia; Tax ID No. 1103002065 (Russia); Registration Number 1101103000272 (Russia) [RUSSIA-EO14024] (Linked To: JSC VORKUTAUGOL).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JSC VORKUTAUGOL, a person whose property and interests in property are blocked pursuant to E.O. 14024.

35. LIMITED LIABILITY COMPANY ENTRAR (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЭНТРАР), d. 1 ofis 24, pl. Metallistov, Vorkuta 169901, Russia; Tax ID No. 1103047002 (Russia); Registration Number 1221100004730 (Russia) [RUSSIA-EO14024] (Linked To: JSC

VORKUTAUGOL).Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JSC VORKUTAUGOL, a person whose property and interests in property are blocked pursuant to E.O. 14024.

LIMITED LIABILITY COMPANY ZHEMCHUZHINA ARKTIKI (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЖЕМЧУЖИНА АРКТИКИ), d. 1 kab. 24, pl. Metallistov, Vorkuta 169901, Russia; Tax ID No. 1103046915 (Russia); Registration Number 1221100003409 (Russia) [RUSSIA-EO14024] (Linked To: JSC VORKUTAUGOL).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, JSC VORKUTAUGOL, a person whose property and interests in property are blocked pursuant to E.O. 14024.

36. LIMITED LIABILITY COMPANY REDMETKONTSENTRAT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РЕДМЕТКОНЦЕНТРАТ), d. 151 etazh 3 pom. 322, ul. Lyublinskaya, Moscow 109341, Russia; Registration ID 1097746433597 (Russia); Tax ID No. 7723723420 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

37. LIMITED LIABILITY COMPANY NERUDNAYA KOMPANIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НЕРУДНАЯ КОМПАНИЯ) (a.k.a. "LLC NK"), d. 38 ofis 214, ul. Nikolaya Chumichova, Belgorod 308009, Russia; Tax ID No. 3123445260 (Russia); Registration Number 1183123029440 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

38. LIMITED LIABILITY COMPANY TREIDKOM (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТРЕЙДКОМ), d. 38 ofis 2, ul. Nikolaya Chumichova, Belgorod 308009, Russia; Registration ID 1173123041200 (Russia); Tax ID No. 3123426676 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

39. JOINT STOCK COMPANY RUSSIAN COPPER COMPANY (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО РУССКАЯ МЕДНАЯ КОМПАНИЯ) (a.k.a. AO RUSSKAYA MEDNAYA COMPANY; a.k.a. "RCC GROUP"), 57 Gorkogo Street, Ekaterinburg, Sverdlovsk Region 620026, Russia; Tax ID No. 6670061296 (Russia); Registration Number 1046603513450 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

40. INTERNATIONAL LIMITED LIABILITY COMPANY RUSSIAN COPPER COMPANY LIMITED (Cyrillic: МЕЖДУНАРОДНАЯ КОМПАНИЯ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РАШН КОППЕР КОМПАНИ ЛИМИТЕД), Building 8, Office 205, Melkovodny Settlement, Russky Island, Primorski Krai 690922, Russia; Tax ID No. 2540276825 (Russia); Registration Number 1232500012645 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

41. LIMITED LIABILITY COMPANY RCC TRADING (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РМК ТРЕЙДИНГ) (f.k.a. LLC RCC HOLDING COMPANY), 57 Gorkogo Street, Ekaterinburg, Sverdlovsk Region 620075,

Russia; Tax ID No. 6671210688 (Russia); Registration Number 1226600015135 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

42. LLC ARMZ MINING MACHINES (Cyrillic: ООО АРМЗ ГОРНЫЕ МАШИНЫ) (a.k.a. ARMZ MINING MACHINERY; f.k.a. LLC FIRMA GEOSTAR), 1 Avtodoroga N 46, Office 47, 48, Krasnokamensk Municipal Regional City, Zabaykalskiy Territory 674674, Russia; Tax ID No. 5213000558 (Russia); Registration Number 1025201099032 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

43. DENKAR SHIP CONSTRUCTION INCORPORATED COMPANY (Latin: DENKAR GEMI İNŞA ANONIM ŞIRKETI) (a.k.a. DENKAR SHIP REPAIR AND MANAGEMENT COMPANY; f.k.a. FIKRI TAHA METE DENKAR SHIPPING), No: 38/1 Tunc Sok. Postane Mahallesi Tuzla, Istanbul, Turkey; Registration Number 120312-5 (Turkey) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY NORTHERN SHIPPING COMPANY).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, JOINT STOCK COMPANY NORTHERN SHIPPING COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

44. ID SHIP AGENCY TRADE LIMITED COMPANY (Latin: İD GEMI ACENTELIĞI TICARET LIMITED ŞIRKETI) (f.k.a. GLOBAL WORLD SHIP MANAGEMENT AND AGENCY TRADE LIMITED COMPANY; a.k.a. ID SHIPPING AGENCY), Ic Kapi No: 1 No: 15 Sen Sk. Postane Mah. Tuzla, Istanbul, Turkey;

Registration Number 829488-0 (Turkey) [RUSSIA-EO14024] (Linked To: NORD PROJECT LLC TRANSPORT COMPANY).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NORD PROJECT LLC TRANSPORT COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

45. LIMITED LIABILITY COMPANY LOGISTIC INTERNATIONAL SERVIS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЛОГИСТИК ИНТЕРНЕЙШНЛ СЕРВИС) (a.k.a. LOGISTIK INTERNEYSHNL SERVIS OOO), d. 7 str. 1 ofis 411, ul. Radio, Moscow 105005, Russia; Tax ID No. 9701048399 (Russia); Registration Number 1167746806952 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

46. CTL DIS TICARET LIMITED SIRKETI (Latin: CTL DIŞ TICARET LIMITED ŞIRKETI) (a.k.a. CTL FOREIGN TRADE LIMITED COMPANY), Nisbetiye Mah. Gazi Gucnar Sok. Uygur Is Merkezi Blok No: 4, Ic Kapi No: 2 Besiktas, Istanbul, Turkey; Registration ID 371545-5 (Turkey) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY LOGISTIC INTERNATIONAL SERVIS).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, LIMITED LIABILITY COMPANY LOGISTIC INTERNATIONAL SERVIS, a person whose property and interests in property are blocked pursuant to E.O. 14024.

47. LIMITED LIABILITY COMPANY SKAY17 (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СКАЙ17) (a.k.a. ООО Skai17; a.k.a. "Sky17"), d. 19 k. 4 kv. 368, ul. Eletskaya, Moscow 115583, Russia; Tax ID No.

9729098657 (Russia); Registration Number 1177746619137 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

48. LIMITED LIABILITY COMPANY LIS GRUPP (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЛИС ГРУПП), 36 Khamovnicheskiy Val Street, Suite 14N, Room 5, Moscow 119048, Russia; Tax ID No. 7704398990 (Russia); Registration Number 1177746270129 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

49. LIMITED LIABILITY COMPANY MOSCOW BUSINESS BROKERAGE (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ МОСКОВСКИЙ БИЗНЕС БРОКЕРИДЖ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU MOSKOVSKI BIZNES BROKERIDZH; a.k.a. "LLC MBB"), 29 Kalmykova St., Apt. 37, Chelyabinsk 454052, Russia; 26 Malaya Bronnaya St., Building 2, Moscow, Russia; Tax ID No. 7460055442 (Russia); Registration Number 1227400005546 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

50. LIMITED LIABILITY COMPANY INTERNATIONAL BUSINESS CORPORATION (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ МЕЖДУНАРОДНЫЙ БИЗНЕС КОРПОРАЦИЯ) (a.k.a. "LLC IBC"), 27 Yartsevskaya St., Apt. 172, Room 1, Moscow 121552, Russia; Tax ID No. 9731103375 (Russia); Registration Number 1227700743940 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the management consulting sector of the Russian Federation economy.

Vessels

1. SAAM FSU (3E2557) Floating Storage Tanker Panama flag; Vessel Registration Identification IMO 9915090 (vessel) [RUSSIA-EO14024] (Linked To: ARCTIC TRANSSHIPMENT LIMITED LIABILITY COMPANY).

Identified as property in which ARCTIC TRANSSHIPMENT LIMITED LIABILITY COMPANY, a person designated pursuant to E.O. 14024, has an interest.

2. KORYAK FSU (3E2333) Floating Storage Tanker Panama flag; Vessel Registration Identification IMO 9915105 (vessel) [RUSSIA-EO14024] (Linked To: ARCTIC TRANSSHIPMENT LIMITED LIABILITY COMPANY).

Identified as property in which ARCTIC TRANSSHIPMENT LIMITED LIABILITY COMPANY, a person designated pursuant to E.O. 14024, has an interest.

Roland F. de Marcellus,
Acting Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2023–22108 Filed 10–4–23; 8:45 am]
BILLING CODE 4710–AE–C

DEPARTMENT OF STATE

[Public Notice: 12203]

Notice of Department of State Sanctions Actions

SUMMARY: The Department of State is publishing the names of one or more persons that have been placed on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List) administered by the Office of Foreign Asset Control (OFAC) based on the Department of State's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: Aaron Forsberg, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *ForsbergAP@state.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning sanctions programs are available on OFAC's website.

Notice of Department of State Actions

On July 20, 2023, the Department of State determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanction's authority listed below.

BILLING CODE 4710–AE–P

Individuals

1. SMOLIN, Anatoliy Anatolyevich (Cyrillic: СМОЛИН, Анатолий Анатольевич) (a.k.a. SMOLIN, Anatoli Anatolevich; a.k.a. SMOLIN, Anatoly), Russia; DOB 29 Aug 1964; nationality Russia; Gender Male; Tax ID No. 773432805690 (Russia) (individual) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY VEGA STRATEGIC SERVICES).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of, LIMITED LIABILITY COMPANY VEGA STRATEGIC SERVICES, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. STRAMILOV, Igor Mikhailovich (Cyrillic: СТРАМИЛОВ, Игорь Михайлович), Moscow, Russia; DOB 27 Jun 1968; POB Chita, Russia; nationality Russia; Gender Male; Tax ID No. 753700034587 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

3. MARINYCHEV, Pavel Alekseevich (Cyrillic: МАРИНЫЧЕВ, Павел Алексеевич), Russia; DOB 25 Oct 1978; POB Yakutsk, Republic of Sakha (Yakutia), Russia; nationality Russia; Gender Male; Tax ID No. 143515801397 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

4. TOROSOV, Ilya Eduardovich (Cyrillic: ТОРОСОВ, Илья Эдуардович) (a.k.a. TOROSYAN, Ilya Edikovich), Moscow, Russia; DOB 14 Oct 1982; POB Moscow,

Russia; nationality Russia; Gender Male; Tax ID No. 771571859280 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

5. KHERSONTSEV, Aleksey Igorevich (Cyrillic: ХЕРСОНЦЕВ, Алексей Игоревич) (a.k.a. KHERSONTSEV, Alexey Ihorovych), Moscow, Russia; DOB 21 Aug 1980; POB Lesnoy, Sverdlovsk Region, Russia; nationality Russia; Gender Male; Tax ID No. 663004268009 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

6. OSMAKOV, Vasiliy Sergeevich (Cyrillic: ОСЬМАКОВ, Василий Сергеевич) (a.k.a. OSMAKOV, Vasily Sergeyevich), Moscow, Russia; DOB 08 Jun 1983; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

7. SNIKKARS, Pavel Nikolaevich (Cyrillic: СНИККАРС, Павел Николаевич), Moscow, Russia; DOB 24 Dec 1978; POB Chik, Novosibirsk Region, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

8. GORNIN, Leonid Vladimirovich (Cyrillic: ГОРНИН, Леонид Владимирович), Moscow, Russia; DOB 30 Dec 1972; POB Novosibirsk, Novosibirsk region, Russia;

nationality Russia; Gender Male; Tax ID No. 540316302800 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

9. KUDRIN, Aleksey Leonidovich (Cyrillic: КУДРИН, Алексей Леонидович), Moscow, Russia; DOB 12 Oct 1960; POB Dobele, Latvia; nationality Russia; Gender Male; Tax ID No. 773600493205 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

10. SOROKIN, Pavel Yurevich (Cyrillic: СОРОКИН, Павел Юрьевич), Moscow, Russia; DOB 01 Aug 1985; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

11. KOROLEV, Sergey Borisovich (Cyrillic: КОРОЛЕВ, Сергей Борисович) (a.k.a. KOROLYOV, Sergei Borisovich), Moscow, Russia; DOB 25 Jul 1962; POB Bishkek, Kyrgyzstan; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

12. ANOKHIN, Vasiliy Nikolaevich (Cyrillic: АНОХИН, Василий Николаевич) (a.k.a. ANOKHIN, Vasily Nikolayevich), Smolensk Region, Russia; DOB 24 May 1983; POB Moscow, Russia; nationality Russia; Gender Male; Tax ID No. 502009476264 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

13. SOLDATOV, Maksim Valeriovych (Cyrillic: СОЛДАТОВ, Максим Валерійович) (a.k.a. SOLDATOV, Maksim Valerevich (Cyrillic: СОЛДАТОВ, Максим Валерьевич)), 2 Moscovskaya St., Apartment 12, Makeevka, Donetsk Region, Ukraine; DOB 26 Jan 1983; nationality Ukraine; Gender Male; Tax ID No. 3034102451 (Ukraine); alt. Tax ID No. 931100211650 (Russia) (individual) [RUSSIA-EO14024] (Linked To: STATE UNITARY ENTERPRISE OF THE DONETSK PEOPLE'S REPUBLIC REPUBLICAN CENTER TRADING HOUSE VTORMET).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been the leader, official, senior executive officer, or member of the board of directors of, STATE UNITARY ENTERPRISE OF THE DONETSK PEOPLE'S REPUBLIC REPUBLICAN CENTER TRADING HOUSE VTORMET, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Entities

1. NAUCHNO ISSLEDOVATELSKII I PROEKTNYI INSTITUT PO PERERABOTKE GAZA AO (Cyrillic: НАУЧНО ИССЛЕДОВАТЕЛЬСКИЙ И ПРОЕКТНЫЙ ИНСТИТУТ ПО ПЕРЕРАБОТКЕ ГАЗА АО) (a.k.a. NIPI GAZPERERABOTKA AO; a.k.a. NIPIGAS JSC; a.k.a. NIPIGAZ AO), 65 Profsoyuznaya Street, Bld. 1, Moscow 117342, Russia; Tax ID No. 2310004087 (Russia); Registration Number 1022301597394 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the engineering sector of the Russian Federation economy.

2. OBSHESTVO S OGRANICHENNOJ OTVETSTVENNOSTYU NIPIGAZ IT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НИПИГАЗ ИТ) (a.k.a. NIPIGAS IT LLC), 65 Profsoyuznaya Street, Room 1, Moscow 117342, Russia; Tax ID No. 9728089667 (Russia); Registration Number 1237700161115 (Russia) [RUSSIA-EO14024] (Linked To: NAUCHNO ISSLEDOVATELSKII I PROEKTNYI INSTITUT PO PERERABOTKE GAZA AO)

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, NAUCHNO ISSLEDOVATELSKII I PROEKTNYI INSTITUT PO PERERABOTKE GAZA AO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. OBSHESTVO S OGRANICHENNOJ OTVETSTVENNOSTYU NIPIGAZ AKTIV (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НИПИГАЗ АКТИВ), 118 Krasnaya Street, Krasnodar 350000, Russia; Tax ID No. 2310191373 (Russia); Registration Number 1162375007167 (Russia) [RUSSIA-EO14024] (Linked To: NAUCHNO ISSLEDOVATELSKII I PROEKTNYI INSTITUT PO PERERABOTKE GAZA AO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, NAUCHNO ISSLEDOVATELSKII I PROEKTNYI INSTITUT PO PERERABOTKE GAZA AO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. LIMITED LIABILITY COMPANY KOSMOSAVIA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КОСМОСАВИА) (a.k.a. KOSMOSAVIA OOO), 10 Pskovskaya St., Building 1, Floor 11, Office 297, Moscow

127253, Russia; Tax ID No. 9715264294 (Russia); Registration Number 1167746608974 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

5. STATE UNITARY ENTERPRISE OF THE DONETSK PEOPLE'S REPUBLIC REPUBLICAN CENTER TRADING HOUSE VTORMET (Cyrillic: ГОСУДАРСТВЕННОЕ УНИТАРНОЕ ПРЕДПРИЯТИЕ ДОНЕЦКОЙ НАРОДНОЙ РЕСПУБЛИКИ РЕСПУБЛИКАНСКИЙ ЦЕНТР ТОРГОВЫЙ ДОМ ВТОРМЕТ), 101 Postysheva St., Donetsk 283086, Ukraine; Tax ID No. 9303012971 (Russia); Registration Number 1229300078370 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

6. JSC SIBERIAN SERVICE COMPANY (Cyrillic: АО СИБИРСКАЯ СЕРВИСНАЯ КОМПАНИЯ) (a.k.a. AO SIBIRSKAYA SERVISNAYA KOMPANIYA; a.k.a. SIBERIA SERVICE CO CJSC), Dom 31A, Stroenie 1, Etazh 9, Prospekt Leningradskii, Moscow 125284, Russia; Tax ID No. 0814118403 (Russia); Registration Number 1028601792878 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

7. LIMITED LIABILITY COMPANY IMEX EXPERT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИМЕКС ЭКСПЕРТ), 16/17 Bolshaya Sovetskaya St., Office V 53, Smolensk 214000, Russia; Tax ID No. 6732236950 (Russia); Registration Number 1226700018753 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

8. LIMITED LIABILITY COMPANY FIVEL (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ФИВЕЛ), Building 7, Letter O, Tallinskaya St., Room 1N, Office 352, St. Petersburg 195196, Russia; Tax ID No. 7811700461 (Russia); Registration Number 1187847192048 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

9. LIMITED LIABILITY COMPANY FIFTH ELEMENT TRADING (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ПЯТЫЙ ЭЛЕМЕНТ ТРЕЙДИНГ) (a.k.a. PYATY ELEMENT TREIDING OOO; a.k.a. PYATYI ELEMENT TRADING OOO), 7 Talinnskaya St., Room 1-N, Office 350 Letter O, Saint Petersburg 195196, Russia; Tax ID No. 7806221953 (Russia); Registration Number 1167847086835 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

10. LIMITED LIABILITY COMPANY AB OPTIKS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АБ ОПТИКС), 4a Mikhailova St., Room 3, Suite 176, Office 206/5, Moscow 109428, Russia; Tax ID No. 771301588857 (Russia); Registration Number 1127746455430 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

11. LIMITED LIABILITY COMPANY FORTAP (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ФОРТАП), 3M Dudko St., Room 6N, Office 1-4D, Ivanovskiy Municipal District, St. Petersburg 192029, Russia; Tax ID No.

780227226010 (Russia); Registration Number 1227800043404 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

12. LIMITED LIABILITY COMPANY VEGA STRATEGIC SERVICES (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ВЕГА СТРАТЕДЖИК СЕРВИСЕС) (a.k.a. VEGACY; a.k.a. "PMC VEGA"), 51 Marshala Tukhachevskovo St., Apt. 229, Moscow 123103, Russia; Tax ID No. 7734727145 (Russia); Registration Number 1147746737423 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

13. LIMITED LIABILITY COMPANY PRIVATE SECURITY ORGANIZATION GAZPROMNEFT OKHRANA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЧАСТНАЯ ОХРАННАЯ ОРГАНИЗАЦИЯ ГАЗПРОМНЕФТЬ ОХРАНА), d. 1 etazh 2, Pomeshch. 20, prospect Gubkina, Omsk 644065, Russia; Tax ID No. 5501282179 (Russia); Registration Number 1235500004960 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or purporting to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

14. VITYAZ MACHINE BUILDING COMPANY JOINT STOCK COMPANY (Cyrillic: МАШИНОСТРОИТЕЛЬНАЯ КОМПАНИЯ ВИТЯЗЬ АКЦИОНЕРНОЕ ОБЩЕСТВО) (a.k.a. MK VITYAZ AO), Shosse Industrialnoe d.2, Ishimbai 453203, Russia; Tax ID No. 0261013879 (Russia); Registration Number 1050202782277 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

15. CLOSED JOINT STOCK COMPANY KLIMOVSKIY SPECIALIZED AMMUNITION PLANT (Cyrillic: ЗАКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО КЛИМОВСКИЙ СПЕЦИАЛИЗИРОВАННЫЙ ПАТРОННЫЙ ЗАВОД) (a.k.a. KLIMOVSK SPECIALIZED AMMUNITION PLANT JSC KSAP; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO KLIMOVSKI SPETSIALIZIROVANNY PATRONNY ZAVOD), Ul. R.Lyuksemburg 18A, Tarusa 249100, Russia; Tax ID No. 5021011845 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

16. FEDERAL STATE ENTERPRISE YA M SVERDLOV PLANT (a.k.a. PLANT NAMED AFTER IA M SVERDLOV FEDERAL STATE ENTERPRISE), Sverdlova Street 4, Dzerzhinsk 606002, Russia; Tax ID No. 5249002485 (Russia); Registration Number 1025201752982 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

17. LIMITED LIABILITY COMPANY IRBIS SKY TECH (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИРБИС СКАЙ ТЕХ) (a.k.a. "ООО IST" (Cyrillic: "ООО ИСТ")), 2 Shukinskaya St., Ground Floor, Rooms 32 & 33, Moscow 123182, Russia; Tax ID No. 7722754271 (Russia); Registration Number 1117746657280 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

18. LIMITED LIABILITY COMPANY LEGION (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЛЕГИОН), 53 Volgogradskiy Avenue, Floor 1, Suite II, Room 2, Moscow 109125, Russia; Tax ID No. 7722342422 (Russia); Registration Number 1157746933299 (Russia) [RUSSIA-EO14024] (Linked To: STRAMILOV, Igor Mikhailovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or purporting to act for or on behalf of, directly or indirectly, IGOR MIKHAILOVICH STRAMILOV, a person whose property and interests in property are blocked pursuant to E.O. 14024.

19. LIMITED LIABILITY COMPANY PRIVATE SECURITY ORGANIZATION LEGAT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЧАСТНАЯ ОХРАННАЯ ОРГАНИЗАЦИЯ ЛЕГАТ), 2 Shukinskaya St., Ground Floor, Room 35, Moscow 123182, Russia; Tax ID No. 7707350926 (Russia); Registration Number 1157746835806 (Russia) [RUSSIA-EO14024] (Linked To: STRAMILOV, Igor Mikhailovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or purporting to act for or on behalf of, directly or indirectly, IGOR MIKHAILOVICH STRAMILOV, a person whose property and interests in property are blocked pursuant to E.O. 14024.

20. PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО САХАЛИНСКОЕ МОРСКОЕ ПАРОХОДСТВО) (f.k.a. OAO SAKHMP; a.k.a. PJSC SASCO), d. 18A pom. 7, ul. Pobedy, Kholmsk 694620, Russia; Tax ID No. 6509000854 (Russia); Registration Number 1026501017828 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the marine sector of the Russian Federation economy.

21. OOO MORSKIE PAROMNYE LINII VANINO SAKHALIN (a.k.a. OOO MPL VANINO SAKHALIN (Cyrillic: ООО МПЛ ВАНИНО САХАЛИН)), d. 70 k. A pom. 7 Ter. Zheleznodorozhnaya, 682860, Russia; Tax ID No. 2709014374 (Russia); Registration Number 1132709000038 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY). Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or purporting to act for or on behalf of, directly or indirectly, PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. AO VOSTOK TREID INVEST (Cyrillic: АО ВОСТОК ТРЕЙД ИНВЕСТ), d. 18A pom. 7, ul. Pobedy, Kholmsk 694620, Russia; Tax ID No. 9705144294 (Russia); Registration Number 1207700186210 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY). Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or purporting to act for or on behalf of, directly or indirectly, PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

23. BUROVAYA KOMPANIYA EURASIA LLC (Cyrillic: БУРОВАЯ КОМПАНИЯ ЕВРАЗИЯ ООО) (a.k.a. LIMITED LIABILITY COMPANY EVRAZIYA; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU BUROVAYA KOMPANIYA EVRAZIYA; a.k.a. "БКЕ ООО" (Cyrillic: "БКЕ ООО")), 40, 2 Ulitsa Narodnogo Opolcheniya, Moscow 123298, Russia; Tax ID No. 8608049090 (Russia); Registration Number 1028601443034 (Russia) [RUSSIA-EO14024]. Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

24. RADIANT EK AO (Cyrillic: РАДИАНТ ЭК АО) (a.k.a. AO GK RADIANT), Ulitsa Profsoyuznaya, Dom 65, Korpus 1, Moscow 117342, Russia; Tax ID No. 7728792756 (Russia); Registration Number 1117746996377 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

Vessels

1. SASCO ALDAN (UBOV4) General Cargo Russia flag; Vessel Registration Identification IMO 9358034 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

2. SASCO AVACHA (UBMO9) Container Ship Russia flag; Vessel Registration Identification IMO 9246140 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

3. SASCO ANGARA (UBUO6) Container Ship Russia flag; Vessel Registration Identification IMO 9242986 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

4. SASCO ANIVA (UBBO5) Container Ship Russia flag; Vessel Registration Identification IMO 9255402 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

5. PATRIA (UBVP6) Roll-on Roll-off Russia flag; Vessel Registration Identification IMO 9159921 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

6. ZEYA (UHMI) Container Ship Russia flag; Vessel Registration Identification IMO 9118355 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

7. KUNASHIR (UBSI9) General Cargo Russia flag; Vessel Registration Identification IMO 9142588 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

8. PARAMUSHIR (UIHY) General Cargo Russia flag; Vessel Registration Identification IMO 9190286 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

9. SELENGA (UBSH8) General Cargo Russia flag; Vessel Registration Identification IMO 8714657 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

10. SHANTAR (UBNJ7) General Cargo Russia flag; Vessel Registration Identification IMO 9190274 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

11. SIMUSHIR (UBRI5) General Cargo Russia flag; Vessel Registration Identification IMO 9179385 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

12. SAKHALIN 8 (UERK) Passenger Russia flag; Vessel Registration Identification IMO 8330516 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

13. SAKHALIN 9 (UCEE) Passenger Russia flag; Other Vessel Type Roll-on Roll-off; Vessel Registration Identification IMO 8728543 (vessel) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

14. SAKHALIN 10 (UCDL) Passenger Russia flag; Other Vessel Type Roll-on Roll-off; Vessel Registration Identification IMO 8857667 (vessel) [RUSSIA-EO14024]

(Linked To: PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY).

Identified as property in which PUBLIC JOINT STOCK COMPANY SAKHALIN SHIPPING COMPANY, a person designated pursuant to E.O. 14024, has an interest.

Roland F. de Marcellus,

Acting Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2023–22109 Filed 10–4–23; 8:45 am]

BILLING CODE 4710–AE–C

DEPARTMENT OF STATE

[Public Notice: 12204]

Notice of Department of State Sanctions Actions

SUMMARY: The Department of State is publishing the names of one or more persons that have been placed on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List) administered by the Office of Foreign Asset Control (OFAC) based on the Department of State's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: Aaron P. Forsberg, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *ForsbergAP@state.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning sanctions programs are available on OFAC's website.

Notice of Department of State Actions

On August 24, 2023, the Department of State determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanction's authority listed below.

BILLING CODE 4710–AE–P

Individuals

1. PYATYKH, Galina Anatolevna (Cyrillic: ПЯТЫХ, Галина Анатольевна), Belgorod Region, Russia; DOB 12 May 1970; POB Dubovoe, Belgorod Region, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. AGEEVA, Irina Anatolyevna (Cyrillic: АГЕЕВА, Ирина Анатольевна) (a.k.a. AGEYEVA, Irina Anatolyevna), Kaluga Region, Russia; DOB 29 Dec 1976; nationality Russia; Gender Female; Tax ID No. 402905986507 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. CHERKASOVA, Irina Aleksandrovna (Cyrillic: ЧЕРКАСОВА, Ирина Александровна) (a.k.a. CHERKASOVA, Iryna Oleksandrivna), Rostov Region, Russia; DOB 30 May 1963; POB Bataysk, Rostov Region, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

4. SOLTAEV, Mansur Mussaevich (Cyrillic: СОЛТАЕВ, Мансур Муссаевич) (a.k.a. SOLTAEV, Mansur Mussayevitch; a.k.a. SOLTAJEV, Mansur Mussajevic; a.k.a.

SOLTAYEV, Mansur Mussayevich), Chechen Republic, Russia; DOB 13 Jun 1978; POB Saratov, Russia; nationality Russia; Gender Male; Tax ID No. 201480830976 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

5. KHUCHIEV, Muslim Magomedovich (Cyrillic: ХУЧИЕВ, Муслим Магомедович), Chechen Republic, Russia; DOB 05 Aug 1971; POB Zakan-Yurt, Achkhoy-Martan District, Chechen Republic, Russia; nationality Russia; Gender Male; Tax ID No. 771409546605 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

6. FEDORENKO, Konstantin Albertovich (Cyrillic: ФЕДОРЕНКО, Константин Альбертович), 15 Pushkina St, Belorechensk, Belorechensky District, Krasnodar Territory, Russia; DOB 29 Dec 1976; POB Belorechensk, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: FEDERAL STATE BUDGETARY EDUCATIONAL INSTITUTE INTERNATIONAL CHILDREN CENTER ARTEK).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been the leader, official, senior executive officer, or member of the board of directors of, Federal State Budgetary Educational Institute International Children Center Artek, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

7. CHALAEV, Zamid Alievich (Cyrillic: ЧАЛАЕВ, Замид Алиевич) (a.k.a. CHALAYEV, Zamid Alievich), 8 T. Chalaeva St., Sterch Kerch Locality, Nozhay Yurtovsky District, Chechnya, Russia; 49 Bisaeva St., Gudermes, Chechnya, Russia;

DOB 19 Aug 1981; POB Benoy Village, Nozhay Yurtovsky District, Chechnya, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

8. SHAPUROVA, Olena Oleksandrivna (Cyrillic: ШАПУРОВА, Олена Олександрівна) (a.k.a. SHAPUROVA, Alyona Aleksandrovna; a.k.a. SHAPUROVA, Elena Aleksandrovna (Cyrillic: ШАПУРОВА, Елена Александровна)), 31 50 Years of Victory Avenue, Apartment 29, Melitopol, Zaporizhzhia region, Ukraine; DOB 16 Nov 1976; POB Melitopol, Zaporizhzhia region, Ukraine; nationality Ukraine; Gender Female; Tax ID No. 2807902401 (Ukraine) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

9. KADYROVA, Aymani Nesievna (Cyrillic: КАДЫРОВА, Аймани Несиевна) (a.k.a. KADYROVA, Aimana), Russia; DOB 04 Aug 1953; POB Kurgamys, Pavlodar Region, Kazakhstan; nationality Russia; Gender Female; Tax ID No. 200602168574 (Russia) (individual) [RUSSIA-EO14024] (Linked To: AKHMAT KADYROV FOUNDATION).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of, Akhmat

Kadyrov Foundation, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

10. KOVALENKO, Vladimir Vladislavovich (Cyrillic: КОВАЛЕНКО, Владимир Владиславович), 19A Khrustaleva St., Office 32, Sevastopol, Crimea Autonomous Region, Ukraine; DOB 04 Feb 1962; POB Luhansk, Ukraine; nationality Ukraine; Gender Male; Tax ID No. 231523814307 (Russia); alt. Tax ID No. 2268026995 (Ukraine) (individual) [RUSSIA-EO14024] (Linked To: ALL RUSSIAN CHILDREN AND YOUTH MILITARY PATRIOTIC PUBLIC MOVEMENT YOUTH ARMY). Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of, All Russian Children and Youth Patriotic Public Movement Youth Army, an entity whose property and interests in property are blocked pursuant to E.O. 14024

11. NECHAEV, Vladimir Dmitrievich (Cyrillic: НЕЧАЕВ, Владимир Дмитриевич), Sevastopol, Ukraine; DOB 20 Dec 1972; POB Sudzha, Kursk Region, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024]. Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

Entities

1. FEDERAL STATE BUDGETARY EDUCATIONAL INSTITUTE INTERNATIONAL CHILDREN CENTER ARTEK (Cyrillic: ФЕДЕРАЛЬНОЕ ГОСУДАРСТВЕННОЕ БЮДЖЕТНОЕ ОБРАЗОВАТЕЛЬНОЕ УЧРЕЖДЕНИЕ МЕЖДУНАРОДНЫЙ ДЕТСКИЙ ЦЕНТР АРТЕК) (a.k.a. THE FEDERAL STATE BUDGET EDUCATIONAL INSTITUTION ARTEK INTERNATIONAL CHILDRENS

CENTER), 41 Lenningradskaya St., Gurzuf, Crimea 298645, Ukraine; Target Type Government Entity; Tax ID No. 230304393615 (Russia); Registration Number 1149102030770 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

2. AKHMAT KADYROV FOUNDATION (Cyrillic: ФОНД АХМАТА КАДЫРОВА) (a.k.a. AKHMAD KADYROV FUND; a.k.a. HERO OF RUSSIA AKHMAT KADYROV REGIONAL PUBLIC FUND; a.k.a. REGIONAL PUBLIC FUND NAMED AFTER HERO OF RUSSIA AKHMAT HAJI KADYROV (Cyrillic: РЕГИОНАЛЬНЫЙ ОБЩЕСТВЕННЫЙ ФОНД ИМ ГЕРОЯ РОССИИ АХМАТА ХАДЖИ КАДЫРОВА); a.k.a. REGIONALNY OBSHCHESTVENNY FOND IMENI GEROYA ROSSII AKHMATA KADYROVA), d. 5 korp., ofis, ul. A.Kadyrova Gudermes, Gudermesski Raion, Chechnya 366200, Russia; Tax ID No. 2005504830 (Russia); Registration Number 1042000001713 (Russia) [GLOMAG] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

Roland F. de Marcellus,

Acting Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2023–22107 Filed 10–4–23; 8:45 am]

BILLING CODE 4710–AE–C

DEPARTMENT OF STATE

[Public Notice: 12209]

Regional Meeting of the Binational Bridges and Border Crossings Group in Tijuana, Baja California, Mexico

ACTION: Notice of a meeting.

SUMMARY: Delegates from the United States and Mexican governments, the states of California and Arizona, and the Mexican states of Baja California and Sonora will participate in a regional meeting of the U.S.-Mexico Binational Bridges and Border Crossings Group on Thursday, October 26, 2023, in Tijuana, Mexico. The purpose of this meeting is to discuss operational matters involving existing and proposed international bridges and border crossings and their related infrastructure and to exchange technical information as well as views on policy. This meeting will include a public session on Thursday, October 26, 2023, from 9:00 a.m. until 12:30 p.m. This session will allow proponents of proposed bridges and border crossings and related projects to make presentations to the delegations and members of the public.

DATES: October 26, 2023.

FOR FURTHER INFORMATION CONTACT: For further information on the meeting and to attend the public session, please contact Hillary Quam via email at *WHA-BorderAffairs@state.gov,* by phone at 202–647–9364, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW, Washington, DC 20520.

Hillary C. Quam,

Border Affairs Coordinator, Office of Mexican Affairs, Department of State.

[FR Doc. 2023–22073 Filed 10–4–23; 8:45 am]

BILLING CODE 4710–29–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Energy Resource Council (RERC) will hold a meeting on November 7, 2023, regarding regional energy related issues in the Tennessee Valley.

DATES: The meeting will be held in Tupelo, on Tuesday November 7, 2023, from 8 a.m. to 5 p.m. CT. RERC members are invited to attend the meeting in person. The name and address for the physical meeting location in Tupelo will be provided on the RERC website at *www.tva.gov/rerc.* The public is invited to view the meeting virtually or attend in person. A 1-hour public listening session for the public to present comments virtually or in person will be held November 7, 2023, at 2:00 p.m. CT. A link and instructions to view the meeting will be posted on TVA's RERC website at *www.tva.gov/rerc.*

ADDRESSES: The physical meeting location in Tupelo, Mississippi will be provided on the RERC website at *www.tva.gov/rerc.* The meeting will also be available virtually to the public. Instructions to view the meeting will be posted at *www.tva.com/rerc* prior to the meeting. Persons who wish to speak virtually during the public listening session must pre-register by 5:00 p.m. ET Friday, November 3, by emailing *bhaliti@tva.gov.* Anyone needing special accommodations should let the contact below know at least one week in advance.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov* or 931–349–1894.

SUPPLEMENTARY INFORMATION: The RERC was established to advise TVA on its energy resource activities and the priorities among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. 10.

The meeting agenda includes the following:

November 7

1. Welcome and Introductions
2. RERC and TVA Meeting Update
3. Introduction to TVA
4. IRP Overview
5. Valley Pathways Update
6. Utility of the Future Engagement and Outcomes
7. Public Listening Session
8. Discussion on ''TVA's Energy System of the Future'' for the benefit of TVA Board Members

The RERC will hear views of citizens by providing a 1-hour public comment session starting November 7 at 2:00 p.m. CT. Persons wishing to speak virtually must register by sending an email at *bhaliti@tva.gov* or by calling 931–349–1894 by 5:00 p.m. ET, on Friday, November 3, 2023, and will be called on during the public listening session for up to five minutes to share their views. Written comments are also invited and may be emailed to *bhaliti@tva.gov.*

Dated: September 28, 2023.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2023–22177 Filed 10–4–23; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0214; FMCSA–2015–0116; FMCSA–2019–0030; FMCSA–2019–0031; FMCSA–2019–0033; FMCSA–2019–0034]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on October 4, 2023. The exemptions expire on October 4, 2025. Comments must be received on or before November 6, 2023. Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before November 6, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2014–0214, Docket No. FMCSA–2015–0116, Docket No. FMCSA–2019–0030, Docket No. FMCSA–2019–0031, Docket No. FMCSA–2019–0033, or Docket No. FMCSA–2019–0034 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2014–0214, FMCSA–2015–0116, FMCSA–2019–0030, FMCSA–2019–0031, FMCSA–2019–0033, or FMCSA–2019–0034) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.

• *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0214, Docket No. FMCSA–2015–0116, Docket No. FMCSA–2019–0030, Docket No. FMCSA–2019–0031, Docket No. FMCSA–2019–0033, or Docket No. FMCSA–2019–0034), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2014–0214, FMCSA–2015–0116, FMCSA–2019–0030, FMCSA–2019–0031, FMCSA–2019–0033, or FMCSA–2019–0034) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2014–0214, FMCSA–2015–0116, FMCSA–2019–0030, FMCSA–2019–0031, FMCSA–2019–0033, or FMCSA–2019–0034) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The seven individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the seven applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The seven drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV

[1] These criteria may be found in Appendix A to Part 391—Medical Advisory Criteria, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of October 4, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Douglas Day (IN)
Dennis Klamm (MN)
Michael Miller (TX)
Ryan Moore (NC)
William Swann (MD)
Tyler Tilseth (NM)
Adam Wilson (MN)

The drivers were included in docket number FMCSA–2014–0214, FMCSA–2015–0116, FMCSA–2019–0030, FMCSA–2019–0031, FMCSA–2019–0033, or FMCSA–2019–0034. Their exemptions are applicable as of October 4, 2023 and will expire on October 4, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the seven exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–22122 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0022]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on October 2, 2023. The exemptions expire on October 2, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0022) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Older-Newer),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On August 21, 2023, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 56913). The public comment period ended on September 20, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of

an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding. However, FMCSA received a comment from one of the applicants, Eric Shepeard, outside of the docket. Eric Shepeard stated that their class of license was incorrectly indicated in the notice published on August 21, 2023, (88 FR 56913). Their correct class of license is a class D license.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Eric Blount (AZ)
Shaun Cannady (CA)
Rebecca Haynes (TX)
Kyesha Hemphill (MS)
Kayla Lucero (NM)
Alexandra Muller (AZ)
Glenn Rozier (GA)
Aaron Sanders (WA)
Eric Shepeard (DE)
Timothy Szabo (WI)
Perry Wesberry (VA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–22148 Filed 10–4–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 15254

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with Form 15254, *Request for Section 754 Revocation.*

DATES: Written comments should be received on or before December 4, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–2297—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Section 754 Revocation.

OMB Number: 1545–2297.

Document Number: 15254.

Abstract: Form 15254 is a public use form which will be submitted by partnerships to request a Section 754 Revocation. Partnerships, partners, and their representatives will need to access the form from *IRS.gov* to complete and submit the form along with the required documents.

Current Actions: There are no changes to the burden previously approved by OMB. This request is to extend the current approval for another 3 years.

Type of Review: Extension of a currently approved collection.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 5 hrs., 7 min.

Estimated Total Annual Burden Hours: 256.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 2, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023–22191 Filed 10–4–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Agency Information Collection Activity: Application for Assumption Approval and/or Release From Personal Liability to the Government on a Home Loan

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 4, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0110'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

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. 2900–0110'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3713(a) and 3714 and 3702(b)(2).

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan.

OMB Control Number: 2900–0110.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–6381 is completed by Veterans who are selling their homes by assumption rather than requiring purchasers to obtain their own financing to pay off the loan. The data furnished on the form is essential to determinations for assumption approval, release of liability, and substitution of entitlement in accordance with 38 U.S.C. 3713(a) and 3714 and 3702(b)(2).

Affected Public: Individuals and households.

Estimated Annual Burden: 167 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,000 per year.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–22172 Filed 10–4–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0770]

Agency Information Collection Activity Under OMB Review: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (VBA, VHA, NCA)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health 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 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. Refer to ''OMB Control No. 2900–0770.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0770'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (VBA, VHA, NCA).

OMB Control Number: 2900–0770.

Type of Review: Revision of a currently approved collection.

Abstract: Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Department of Veterans Affairs (VA) seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery for Veterans Benefits Administration (VBA); Veterans Health Administration (VHA); and National Cemetery Administration (NCA). By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study.

The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the VA and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the provision of services will be unavailable to the Agency.

The Agency will only submit information collections for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

The types of collections that this generic clearance covers include, but are not limited to, Program Satisfaction Surveys; Focus Groups; Customer Comment Cards; Small Discussion Groups of customers, potential customers, delivery partners, or other stakeholders; Cognitive Laboratory Studies, such as those used to refine questions or assess usability of a website; Qualitative Customer Satisfaction Surveys, such as post-transaction surveys and opt-out web surveys; In-person Observation Testing, such as website or software usability tests; and Patient Surveys. As a general matter, information collections under this clearance will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

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 147 on August 2, 2023, pages 50952 and 50953.

Affected Public: Individuals or Households; Businesses and Organizations; State, Local or Tribal Government.

Estimated Annual Burden: 256,000 total hours.

Program Satisfaction Surveys: 75,000.

Focus Groups: 32,000.

Customer Comment Cards: 7,500.

Small Discussion Groups: 2,750.

Cognitive Laboratory Studies: 30,000.

Qualitative Customer Satisfaction Surveys: 62,500.

In-Person Observation Testing: 6,000.

Patient Surveys: 40,250.

Estimated Average Burden per Respondent:

Program Satisfaction Surveys: 30 minutes.

Focus Groups: 60 minutes.

Customer Comment Cards: 30 minutes.

Small Discussion Groups: 30 minutes.

Cognitive Laboratory Studies: 60 minutes.

Qualitative Customer Satisfaction Surveys: 30 minutes.

In-Person Observation Testing: 30 minutes.

Patient Surveys: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 450,000 total.

Program Satisfaction Surveys: 150,000.

Focus Groups: 32,000.

Customer Comment Cards: 15,000.

Small Discussion Groups: 5,500.

Cognitive Laboratory Studies: 30,000.

Qualitative Customer Satisfaction Surveys: 125,000.

In-Person Observation Testing: 12,000.

Patient Surveys: 80,500.

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. 2023–22143 Filed 10–4–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Thursday,

No. 192 October 5, 2023

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 101

Accounting and Reporting Treatment of Certain Renewable Energy Assets; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM21–11–000; Order No. 898]

Accounting and Reporting Treatment of Certain Renewable Energy Assets

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission or FERC) is amending the Uniform System of Accounts (USofA) for public utilities and licensees to: create new accounts for wind, solar, and other renewable generating assets; create a new functional class for energy storage accounts; codify the accounting treatment of environmental credits; and create new accounts within existing functions for computer hardware, software, and communication equipment. We also amend the relevant FERC forms to accommodate these changes.

DATES: *Effective date:* This rule is effective January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Daniel Birkam (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8035, *Daniel.Birkam@ferc.gov*

Todd Kuzniewski (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6381, *Todd.Kuzniewski@ferc.gov*

Nathan Lobel (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8456, *Nathan.Lobel@ferc.gov*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

1. In this final rule, the Commission is revising the Uniform System of Accounts (USofA) [1] to account for rapid changes in technology and resource mix in the U.S. energy industry over recent decades. The reforms adopted in this final rule will add functional detail to the USofA in order to provide uniformity, consistency, and transparency in accounting and reporting for investments in these technologies, and to assist the Commission in fulfilling its responsibilities under the Federal Power Act (FPA) to ensure that rates remain just and reasonable. Therefore, pursuant to the Commission's authority to prescribe accounting and financial reporting requirements for jurisdictional companies under section 301 of the FPA,[2] we modify part 101 [3] of the Commission's regulations to: (1) create new subfunctions and accounts for wind, solar, and other renewable generating assets; (2) establish a new functional class and accounts for energy storage assets; (3) create new accounts and codify accounting treatment for environmental credits; and (4) create new accounts for computer hardware, software, and communication equipment within existing functions that do not already include them. The final rule also makes corresponding changes to the following FERC Forms to implement the USofA changes: FERC Form Nos. 1, 1–F, 3–Q (electric), and 60.[4]

2. Generally, we are adopting the specific reforms proposed in the Notice of Proposed Rulemaking (NOPR) (87 FR 59870 (Oct. 3, 2022)), but with certain revisions based on the record in this proceeding. In particular, certain proposals in the NOPR have been altered in this final rule to effectuate the Commission's intent, better address the needs of different stakeholders, and facilitate solutions to potential technical challenges.

3. As discussed further below in section IV.G (Proposed Compliance Procedures), each utility must implement the requirements of this final rule by January 1, 2025.

[1] *Uniform System of Accounts Prescribed for Public Utilities & Licensees Subject to the Provisions of the Federal Power Act,* 18 CFR part 101. Unless otherwise indicated, references to the USofA in this final rule refer to the USofA for public utilities and licensees.

[2] 16 U.S.C. 825.

[3] 18 CFR part 101.

[4] Edits to the FERC Form No. 60 Annual Report of Centralized Service Companies, governed under the Public Utility Holding Company Act, are the result of changes to the FERC forms for public utilities and licensees from which FERC Form No. 60 summarily references accounts.

II. Background

A. Previous Changes to the USofA

4. The USofA was created by the Federal Power Commission to facilitate the Commission's ratemaking responsibilities and uniformly capture financial and operational information for, first, traditional public utilities, and then natural gas pipelines.[5] The USofA has been modified over time to account for changing technological, legal, and market conditions.

5. For example, in Order No. 552, the Commission revised the USofA to account for sulfur dioxide emissions allowances under the 1990 Clean Air Act Amendments.[6] In that order, the Commission created new inventory Accounts 158.1 (Allowance Inventory) and 158.2 (Allowances Withheld) and new expense Account 509 (Allowances) to accommodate the new sulfur dioxide emissions allowances. The Commission noted that some commenters sought to classify allowances in existing accounts to facilitate a desired ratemaking result; however, the Commission found these comments unpersuasive because accounting rules provide sound and uniform accounting rather than dictating particular ratemaking results.[7]

6. In 2013, the Commission issued Order No. 784, which revised the USofA and related forms to codify accounting treatment for energy storage.[8] The Commission created: (1) new electric plant and associated operating and maintenance expense accounts (O&M accounts) to record investments in, and operations and maintenance costs associated with, energy storage assets; (2) a new purchased power account to record the cost of power purchased for use in storage operations; and (3) new FERC Form Nos. 1 and 1–F schedules.[9] Order No. 784 also amended existing schedules in FERC Form Nos. 1, 1–F, and 3–Q (electric) to report operational and statistical data on storage assets.

7. Specifically, the Commission created electric plant accounts for energy storage assets within the existing USofA functions: Account 348 (Energy Storage Equipment—Production), Account 351 (Energy Storage Equipment—Transmission), and Account 363 (Energy Storage Equipment—Distribution).[10] The Commission created corresponding new O&M accounts: Account 548.1 (Operation of Energy Storage Equipment) and Account 553.1 (Maintenance of Energy Storage Equipment) for energy storage plant classified as production; Account 562.1 (Operation of Energy Storage Equipment) and Account 570.1 (Maintenance of Energy Storage Equipment) for energy storage plant classified as transmission; and Account 582.1 (Operation of Energy Storage Equipment) and Account 592.2 (Maintenance of Energy Storage Equipment) for energy storage plant classified as distribution.[11]

8. In these energy storage accounts, the installed cost of energy storage assets is recorded based on the function or purpose the assets serve. Where an energy storage asset performs more than one purpose or function, Order No. 784 requires the cost of the asset to be allocated among the accounts based on the functions performed and approved rate recovery.[12] While some commenters argued that the requirement to allocate energy storage assets that perform multiple functions across the relevant accounts places an undue administrative burden on utilities, the Commission nevertheless provided for functional recording because utilities that recover the costs of storage operations on a cost of service basis must already maintain cost allocation information on the assets.[13] Furthermore, the Commission in Order No. 784 found that the alternative of recording all costs of energy storage assets in a single plant account would result in less transparent reporting.[14]

B. Locke Lord Petition

9. In Docket No. AC20–103, Locke Lord submitted a petition to the Chief Accountant requesting confirmation that the costs of certain wind and solar generating assets should be booked to Other Production Accounts 343 (Prime Movers), 344 (Generators), and 345 (Accessory Electric Equipment).[15] Specifically, Locke Lord proposed to record: (1) wind turbines, solar modules, combiner circuits, and inverters to Account 343 (Prime

[5] 18 CFR part 101.

[6] *Revisions to Uniform System of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 & Regulatory-Created Assets & Liabilities & to Form Nos. 1, 1–F, 2 & 2–A,* Order No. 552, 62 FR 61299 (Nov. 17, 1997), FERC Stats. & Regs. ¶ 30,967 (1993) (cross-referenced at 62 FERC ¶ 61,299).

[7] *Id.* at 30,799.

[8] *Third-Party Provision of Ancillary Services; Accounting & Financial Reporting for New Electric Storage Technologies,* Order No. 784, 78 FR 46178 (July 30, 2013), 144 FERC ¶ 61,056 (2013), *order on clarification,* Order No. 784–A, 146 FERC ¶ 61,114 (2014).

[9] *Id.* P 123.

[10] *Id.* P 141.

[11] *Id.* P 147.

[12] *Id.* P 126.

[13] *Id.* P 133.

[14] *Id.* P 135.

[15] *Locke Lord LLP,* 174 FERC ¶ 61,033, at P 1 (2021).

Movers); (2) wind turbine generators to Account 344 (Generators); and (3) DC conductors, individual low-voltage step-up transformers, AC conductors (34.5 kV) associated with collector systems, power cables, conduit and underground duct banks, circuit breakers, disconnect switches and accessories, grounding conductors and grounding transformers, collector system buses, main and/or auxiliary transfer buses, collector system control systems, Supervisory Control and Data Acquisition (SCADA) systems, static capacitors and reactors, and collector system substations to Account 345 (Accessory Electric Equipment).

10. Some commenters in that proceeding argued that the petition proposed recording inappropriate costs, including costs related to the collector system and SCADA,[16] into Account 345 (Accessory Electric Equipment), which would implicate broader issues of compensation for reactive power.[17] Some commenters, including Edison Electric Institute (EEI), suggested that the Commission consider creating new accounts for wind, solar, and other non-hydro renewables to resolve this dispute.[18]

11. The Commission denied the petition, noting that the record reflected substantial disagreement about equipment functions and categorizations.[19] In so doing, the Commission also noted that it would concurrently issue a Notice of Inquiry (NOI) to consider creating separate categories of accounts in the USofA for wind and solar generating assets.[20] The Commission has since opened a separate proceeding under Docket No. RM22–2–000 to gather comments and information about potential alternative reactive power compensation.

C. Notice of Inquiry

12. On January 19, 2021, the Commission issued an NOI in the instant docket seeking comment on the appropriate accounting treatment for certain renewable generating assets.[21] Specifically, the Commission sought comment on: (1) whether to create new accounts within the USofA for non-hydro renewable energy generating assets; [22] (2) what modifications to FERC Form No. 1 are needed to reflect these changes; (3) whether to codify the proper accounting treatment of the purchase, generation, and use of renewable energy credits (REC); and (4) whether there are rate-setting implications for these accounting and reporting changes.

13. The Commission explained that the USofA contains discrete production accounts for Steam, Nuclear, Hydraulic, and Other Production, but does not contain accounts specifically designated for solar, wind, or other non-hydro renewable generating assets.[23] The Commission noted that companies record non-hydro renewable generating assets in the USofA's Other Production accounts, but that parties have disagreed which Other Production accounts are appropriate for these assets.[24] For example, the Commission noted that no plant account definition clearly describes solar panels, PV inverters, wind generation towers, or the computer hardware and software required to operate wind and solar generators.[25] Similarly, the Commission explained that the related O&M accounts do not uniquely accommodate costs to maintain wind and solar facilities.[26]

14. The Commission also explained that USofA accounts do not explicitly address the purchase, generation, or use of RECs.[27] The Commission found in *Ameren Illinois Co.* that RECs are analogous to sulfur dioxide emission allowances, accounting treatment for which was codified in Order No. 552.[28] The Commission noted that Order No. 552 classified emission allowances as inventory and established new inventory and expense accounts to record the allowances and associated activities.[29] In keeping with Order No. 552, the Commission has found that RECs that are purchased or generated should be recorded in Account 158.1 (Allowance Inventory) and expensed to Account 509 (Allowances) as they are utilized.[30]

15. The Commission also noted that any proposed additions and modifications to its USofA would require corresponding changes to FERC Form No. 1, and could have a significant and measurable impact on rates.[31]

D. Notice of Proposed Rulemaking

16. On July 28, 2022, the Commission issued a NOPR in the same proceeding.[32] In the NOPR, the Commission proposed, as discussed in greater detail below, to: (1) create new subfunctions and accounts for wind, solar, and other non-hydro renewable generating assets; (2) establish a new functional class and accounts for energy storage accounts; (3) create new accounts and codify the accounting treatment of RECs; and (4) create new accounts for computer hardware, software, and communication equipment within existing functions that do not already include them. The Commission received seven comments from a diverse set of stakeholders.[33]

III. Need for Reform

17. In the NOPR, the Commission noted that the USofA has not been significantly modified since the Commission issued Order No. 784 in 2013 and does not provide clear accounting treatment for activities related to many technological and economic developments in the U.S. energy industry of recent decades, like the growth of investments into renewable generating facilities, battery storage, and RECs, among others.[34] By adding functional detail to the USofA, these reforms will provide uniformity, consistency, and transparency in

[16] *Id.* P 6.

[17] *Id.* PP 10, 13. Specifically, the *AEP* Methodology identifies costs associated with four groups of plant investment: (1) the generators/exciters; (2) generator step-up transformers; (3) accessory electric equipment; and (4) the remaining production plant investment. These costs are then allocated between real and reactive power using an allocation factor. *Id.* P 10 n.12.

[18] *Id.* PP 8, 13, 16.

[19] *Id.* P 19.

[20] *Id.* P 20.

[21] *Accounting & Reporting Treatment of Certain Renewable Energy Assets,* Notice of Inquiry, 86 FR 7086, 174 FERC ¶ 61,032 (2021) (NOI).

[22] The NOI defined non-hydro renewable generating assets as production assets other than hydroelectric generators (such as solar, wind energy, geothermal, biomass, etc.) that rely on the heat or motion of the earth or the sun's radiation to produce energy. These assets are denoted as renewable because the power production is based on a fuel source that is not consumed or destroyed by the generation process, such as buried hydrocarbons (coal, oil, natural gas) or the decay of rare irradiated heavy metals (nuclear). Biomass (trees, nut shells, grain husks and stalks, etc.) is considered renewable, despite consumption of its hydrocarbon source, because the carbon it releases is offset by regrowth of carbon capturing equivalent biomass. *Id.* P 1.

[23] *Id.* P 2.

[24] *Id.* PP 2–3.

[25] *Id.* PP 6–9.

[26] *Id.* P 9.

[27] *Id.* PP 4, 13.

[28] *Ameren Illinois Co.,* 170 FERC ¶ 61,267, at P 52 (2020).

[29] NOI, 174 FERC ¶ 61,032 at P 13 (citing Order No. 552, FERC Stats. & Regs. ¶ 30,967).

[30] *Id.* PP 4, 13–14 (citing *Ameren Illinois Co.,* 170 FERC ¶ 61,267 at P 52).

[31] *Id.* PP 12, 16.

[32] *See Accounting & Reporting Treatment of Certain Renewable Energy Assets,* Notice of Proposed Rulemaking, 87 FR 59870 (Oct. 3, 2022), 180 FERC ¶ 61,050, at P 28 (2022) (NOPR).

[33] *See* American Clean Power Association (ACP) and Solar Energy Industries Association (SEIA) (collectively Clean Energy Associations) NOPR Comments; Carl Pechman NOPR Comments; Dominion Energy, Inc. (Dominion) NOPR Comments; EEI and American Gas Association (AGA) (collectively Utility Associations) NOPR Comments; Liquid Energy Pipeline Association (LEPA) NOPR Comments; Pacific Gas and Electric (PG&E) and San Diego Gas and Electric (SDG&E) NOPR Comments; Retail Energy Supply Association (RESA) NOPR Comments.

[34] NOPR, 180 FERC ¶ 61,050 at P 27.

accounting and reporting for investments into these assets, and assist the Commission in fulfilling its responsibilities under the FPA to ensure that rates remain just and reasonable.

18. As discussed in the NOPR and NOI, the USofA contains discrete production accounts for Steam, Nuclear, Hydraulic, and a catch-all category for Other Production.[35] However, the USofA does not have production accounts designated specifically for solar, wind, or other renewable generating assets; public utilities instead record non-hydro renewable generating assets in the Other Production accounts. Given the rapid expansion and development of wind, solar, and other renewable generation technologies, and the record in Docket No. AC20–103 and the instant rulemaking proceeding, we conclude that the USofA must be modified to clarify how public utilities should account for non-hydro renewable generating assets, to avoid inconsistencies in accounting and reporting, and to facilitate the ratemaking process. NOI and NOPR commenters also generally agreed that these accounts are needed given non-hydro renewables' varied and distinct characteristics from existing electric production subfunctions within the USofA.[36]

19. Our reporting requirements for energy storage also need revision. In Order No. 784, the Commission created accounts for energy storage assets and related operations and maintenance expenses within different functions, but underestimated the additional burden that functional reporting, along with frequent reclassification of plant assets and associated accumulated depreciation, imposes on utilities.[37] Since the issuance of Order No. 784, and based on experience and industry input since the issuance of Order No. 784, the Commission now recognizes the need for revisions to its USofA for energy storage accounting. Today, it is clear that frequently changing functionalization imposes significant recordkeeping and reporting burden on utilities, which increases internal control risks for reporting errors in our forms.[38] Consequently, NOI commenters requested the Commission to create, and NOPR commenters supported the proposed creation of, a new energy storage function in this proceeding.[39] We are now persuaded that this new function is needed to simplify and improve recording and reporting of energy storage assets and related expenses.

20. Similarly, the Commission has concluded that USofA revision is needed to formalize accounting treatment for the purchase, generation, and use of environmental credits. While the Commission explained in 2020 that RECs should be treated analogously to the accounting treatment for sulfur dioxide emission allowances addressed in Order No. 552,[40] not all utilities follow this approach.[41] In addition, utilities are increasingly using a variety of environmental crediting items.[42] As such, codifying environmental credit treatment will promote consistent treatment of these items in Commission accounting and reporting.

21. Lastly, designated computer hardware, software, and communication equipment accounts for all functions and plant subfunctions are needed to eliminate ambiguity and improve consistency in accounting and reporting. Currently, the USofA includes designated computer hardware, software, and computer equipment accounts in some functions and subfunctions but not others. Specifically, the Regional Transmission and Market Operation Plant function includes plant accounts for computer hardware, software, and communication equipment, and the Transmission and Regional Market functions contain maintenance accounts for these assets, but no other plant or maintenance function includes such specificity.[43] USofA revisions are therefore needed to provide for consistent treatment of these assets and costs.

IV. Proposed Reforms

A. Creation of New Subfunctions and Accounts for Non-Hydro Renewables

1. NOPR

22. The Commission proposed three new subfunctions within the Production Plant function of the USofA: D. Solar Production, E. Wind Production, and F. Other Non-Hydro Renewable Production.[44] Consistent with all other production subfunctions (*e.g.,* Steam Production, Nuclear Production, and Hydraulic Production), the Commission proposed the following five accounts within each of these three new subfunctions: (1) Accounts 338.1, 338.20, and 339.1 (Land and Land Rights); (2) Accounts 338.2, 338.21, and 339.2 (Structures and Improvements); (3) Accounts 338.8, 338.29, and 339.8 (Other Accessory Electrical Equipment); (4) Accounts 338.12, 338.33, and 339.12 (Miscellaneous Power Plant Equipment); and (5) Accounts 338.13, 338.34, and 339.13 (Asset Retirement Costs).[45] These accounts are similar in description and instruction to the existing accounts of the same title in each of the other production subfunctions.

23. The Commission also proposed to create three additional accounts for the new Solar Production and Wind Production subfunctions: (1) Accounts 338.5 and 338.26 (Collector System); (2) Accounts 338.6 and 338.27 (Generation Step-up Transformers (GSU)); and (3) Accounts 338.7 and 338.28 (Inverters).[46] Similar to distribution system accounts, the Collector System accounts list many of the same items included in the accounts for Poles, Towers and Fixtures (Account 364) and Overhead Conductors and Devices (Account 365).[47] The GSU accounts are intended to record transformers that are directly connected to generator terminal tips and supporting equipment. The inverter accounts are intended to record equipment that converts power from direct current to alternating current.

24. Additionally, the Commission proposed unique generating accounts for all three subfunctions: (1) Account 338.4 (Solar Panels) for Solar Production; (2) Account 338.23 (Wind Turbines) and Account 338.24 (Wind Towers and Fixtures) for Wind Production; and (3) Account 339.3 (Fuel Holders), Account 339.4 (Boilers), and Account 339.6 (Generators) for Other Non-Hydro Renewable Production.[48] The solar panels account is designated to record panels and support equipment that change solar energy into electricity and related supporting structures such as racks and gears. The wind turbines

[35] 18 CFR part 101.

[36] *See* ACP NOI Comments at 16; Alliant Energy NOI Comments at 3; Dominion NOPR Comments at 3; EEI NOI Comments at 4; Utility Associations NOPR Comments at 7. *But see* Clean Energy Associations NOPR Comments at 6 (contending that confusion and inconsistency in recording renewable energy assets can be resolved at lesser cost by clarifying that specific existing USofA accounts should be used).

[37] *See* Order No. 784, 144 FERC ¶ 61,056 at P 133.

[38] EEI NOI Comments at 6–9.

[39] Clean Energy Associations NOPR Comments at 5; EEI NOI Comments at 6–9; Energy Storage Association (ESA) NOI Comments at 1–2; Utility Associations NOPR Comments at 11.

[40] *Ameren Illinois Co.,* 170 FERC ¶ 61,267 at P 52.

[41] EEI NOI Comments at 10.

[42] *See* Carl Pechman NOPR Comments at 4; Utility Associations NOPR Comments at 19.

[43] *See* 18 CFR part 101.

[44] NOPR, 180 FERC ¶ 61,050 at P 33.

[45] *Id.* P 35. The three accounts under each number represent the three new subfunctions: Solar, Wind, and Non-Hydro Renewable Production, respectively.

[46] *Id.* P 36.

[47] For example, Account 364 listed, among others, poles, towers, anchors, and extension arms. Account 365 listed, among others, circuit breakers, conductors, and lightning arrestors.

[48] NOPR, 180 FERC ¶ 61,050 at P 37.

account includes components that are located from the top of the tower to the end of the turbine blades. The wind towers and fixtures account includes the tower and the components contained within the tower that are located from the top of the foundation to the base of the nacelle. The three accounts to record fuel holders, boilers, and generators that are included in Other Non-Hydro Renewable Production capture renewable generation assets that use any fuel source or method (*e.g.,* steam or direct burning). These accounts allow for recording biofuels, hydrogen, geothermal, and other types of generation in this subfunction. Many of the items listed in these account descriptions are the same as those accounts listed in the Steam and Other Production subfunctions.[49]

25. Similar to the new plant accounts for non-hydro renewables, the Commission proposed new O&M accounts for these subfunctions, titled F. Solar Generation, G. Wind Generation, and H. Other Non-Hydro Renewable Generation.[50] All three subfunctions include the following seven accounts consistent with the other subfunctions (*e.g.,* Steam, Nuclear, and Hydraulic): (1) Accounts 558.1, 558.20, and 559.1 (Operation Supervision and Engineering); (2) Accounts 558.4, 558.23, and 559.4 (Rents); (3) Accounts 558.5, 558.24, and 559.5 (Operation Supplies and Expenses (Nonmajor only)); (4) Accounts 558.6, 558.25, and 559.6 (Maintenance Supervision and Engineering (Major only)); (5) Accounts 558.7, 558.26, and 559.7 (Maintenance of Structures (Major only)); (6) Accounts 558.16, 558.36, and 559.15 (Maintenance of Miscellaneous (Solar, Wind, or Other Non-Hydro Renewable) Generation Plant (Major only)); and (7) Accounts 558.17, 558.37, and 559.16 (Maintenance of (Solar, Wind, or Other Non-Hydro Renewable) Generation Plant (Nonmajor only)).[51] These accounts have similar descriptions, items, and instructions to existing accounts.

26. The Commission also proposed four additional maintenance accounts for Solar and Wind Generation subfunctions, but not for the Other Non-Hydro Renewable Production subfunction:[52] (1) Accounts 558.9 and 558.29 (Maintenance of Collector Systems (Major only)); (2) Accounts 558.10 and 558.30 (Maintenance of Generator Step-up Transformers (Major only)); (3) Accounts 558.11 and 558.31 (Maintenance of Inverter Expenses (Major only)); and (4) Accounts 558.12 and 558.32 (Maintenance of Other Accessory Electrical Equipment (Major only)).[53] These accounts allow for recording maintenance expenses for the associated plant accounts for Solar and Wind Production. The proposed list of items for Accounts 558.9 and 558.29 (Maintenance of Collector Systems (Major only)) are similar to the list of items for Account 593 (Maintenance of Overhead Lines (Major only)) in the Distribution Expenses function.

27. The Commission also proposed new operating expense accounts for the main operating costs of the new production subfunctions: for Solar Generation, Account 558.2 (Solar Panel Generation and Other Plant Operating Expenses (Major only)); for Wind Generation, Account 558.21 (Wind Turbine Generation and Other Plant Operating Expenses (Major only)); and for Other Non-Hydro Renewable Generation, Account 559.2 (Other Miscellaneous Generation and Other Plant Operating Expenses (Major only)), and Account 559.3 (Fuel).[54]

28. In addition, the Commission proposed new maintenance accounts for specific generation assets: for Solar Generation, Account 558.8 (Maintenance of Solar Panels (Major only)); for Wind Generation, Account 558.27 (Maintenance of Wind Turbines, Towers and Fixtures (Major only)); and for Other Non-Hydro Renewable Generation, Account 559.9 (Maintenance of Boilers (Major only)), and Account 559.10 (Maintenance of Generating and Electric Equipment (Major only)).[55] These new accounts have similar descriptions and instructions to maintenance accounts for generation equipment in the other subfunctions. The Commission proposed to designate an account for maintenance of electrical equipment separate from the maintenance of generation equipment for the new Solar and Wind Generation subfunctions.

29. Further, the Commission proposed new accounts for the Maintenance of Computer Hardware (Major only), the Maintenance of Computer Software (Major only), and Maintenance of Communication Equipment (Major only) for the three new plant subfunctions (Solar, Wind, and Other Non-Hydro Renewable Generation) corresponding to the plant accounts, as discussed further below.[56]

30. Lastly, the Commission sought comment on several topics.[57] First, to avoid confusion with the existing ''Other Production'' generation subfunction, the Commission sought comment on whether to retitle that subfunction to ''Prime Mover Production'' because the current instructions to the ''Other Production'' subfunction only describe prime mover-type generation assets.[58] Second, noting that the USofA does not currently address kinetic energy from the ocean to generate electricity,[59] the Commission sought comment on whether to include both tidal and wave energy as part of the existing Hydraulic Production function, rather than in the newly proposed other non-hydro renewable asset accounts. Third, the Commission sought comment on whether the Commission's Chief Accountant should issue accounting guidance for hydrogen, and whether it would be helpful to propose revisions to the USofA for natural gas pipelines to account for hydrogen activities.

2. Comments

31. Dominion and Utility Associations support the addition of new accounts for non-hydro renewable generating assets.[60] Clean Energy Associations contend that confusion and inconsistency in recording renewable energy assets could be resolved at lesser cost by clarifying that specific existing USofA accounts should be used, but support the Commission's proposed accounts for wind turbines (Account 338.23); solar panels and related racking and trackers (Account 338.4); inverters and converters (Account 338.28); individual, low-voltage step-up transformers (Accounts 338.6 and 338.26); AC collector systems (Accounts

[49] *See, e.g.,* Account 342 (Fuel Holders, Producers, and Accessories); Account 312 (Boiler Plant Equipment); Account 344 (Generators).

[50] NOPR, 180 FERC ¶ 61,050 at P 38.

[51] Item 7 includes three accounts that are designated as nonmajor only. Nonmajor entities would therefore record all maintenance activities in these accounts without the added granularity required for major entities (Items 1–6).

[52] While wind and solar are distributive in design (*i.e.,* with a collector system spread across a comparatively wide area), other renewables are, as currently conceived, unlikely to be distributive in design. These non-distributive renewable plants, similar to existing coal, oil, nuclear, and gas plants, do not have collector systems. In addition, their generator step-up transformers and inverters are comparatively minor integrated parts.

[53] NOPR, 180 FERC ¶ 61,050 at P 39.

[54] *Id.* P 40.

[55] *Id.* P 41.

[56] *Id.* P 42.

[57] *Id.* PP 34, 43, 68.

[58] A prime mover electric generator is one where the fuel source directly moves the electric turbine rather than using a boiler or other secondary energy transfer.

[59] *See* EEI NOI Comments at 4–5.

[60] Dominion NOPR Comments at 3; Utility Associations NOPR Comments at 7.

338.5 and 338.26); and Static capacitors (Account 338.5).[61]

32. Commenters also suggest specific revisions to the NOPR proposal. First, Clean Energy Associations raise concerns that the NOPR proposed separate accounts for some equipment that is infrequently itemized by manufacturers and typically retired together.[62] For wind facilities, Clean Energy Associations accordingly recommend that the Commission consolidate proposed Account 338.23 (Wind Turbines) and Account 338.24 (Wind Towers and Fixtures) into a single account for the wind turbine generator, tower, pad-mounted or nacelle-mounted transformer, and foundation. Further, they argue that reporting wind towers and turbines together would be consistent with Electric Plant Instruction No. 3, Item 8, Part B, which states ''[t]he cost of specially provided foundations not intended to outlast the machinery or apparatus for which provided, and the cost of angle irons, castings, etc., installed at the base of an item of equipment, shall be charged to the same account as the cost of the machinery, apparatus, or equipment.'' [63] For solar facilities, Clean Energy Associations suggest that the Commission consolidate solar inverter and power station transformer costs into the same account.[64] In the alternative, Clean Energy Associations request that the Commission specify how costs should be recorded when manufacturers or contractors do not itemize them separately.

33. Next, Clean Energy Associations make several comments related to recording collector system costs.[65] First, Clean Energy Associations note inconsistencies in the collector system definitions for Solar Production and Wind Production subfunction accounts, Account 338.5 and Account 338.26, respectively—both between the two and compared with conventional generation accounts. Between the two new Collector System account definitions, Clean Energy Associations suggest revising the definition of the collector system for wind generation in Account 338.26 to mirror the proposed definition for solar generation, which reads: ''This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities and devices (such as static capacitors) that are used to transport and consolidate the power fed from individual wind turbine generators, once it has been stepped-up, to the substation prior to interconnection to the grid.''

34. Further, Clean Energy Associations request that the Commission identify an account for collector system substation costs.[66] Clean Energy Associations recommend that the Commission adopt a separate Production Plant account for the substation similar to the collector system or clarify the definition of the collector system to include the specific items that are part of the collector system substation.

35. Clean Energy Associations also suggest that the Commission consolidate treatment of static capacitors and reactors in the same account.[67] While the NOPR proposed requiring solar system capacitor reporting in Account 338.5 (Collector System) and reactor reporting in Account 338.8 (Other Accessory Electrical Equipment), Clean Energy Associations suggest that no distinction between the two technologies is needed. Specifically, Clean Energy Associations suggest that if the Commission intends to include all of the plant from the high side of the individual, low-voltage step-up transformers located at the inverter power stations and/or the wind turbines to the low side of the Main Power Transformer (MPT) at the substation (for a transmission interconnection) or interconnection with the grid (for a distribution interconnection), it should include both capacitors and reactors connected to the collector system in the definition for the Collector System account. Further, Clean Energy Associations note the need for the Commission to make the same determination for wind generation, which also may use static capacitors and reactors, but is not included in the proposed amendment to the USofA.

36. Clean Energy Associations next suggest that the Commission clarify the end-point of the collector system and adopt definitions that run from inverters or wind turbines up to but not including the MPT, consistent with comparable equipment for conventional generation.[68] According to Clean Energy Associations, the NOPR's solar and wind collector system definitions appear to go beyond the MPT, while conventional generation connects generators to the MPT via connection facilities that end at the low side of the MPT.

37. In addition, Clean Energy Associations request that the Commission establish a separate Production Plant account to house the installed cost of the DC collector system, or clarify that the cost should be reported to Other Accessory Electric Equipment in proposed Account 338.8.[69] According to Clean Energy Associations, the DC collector system does not fit within the NOPR's definitions for proposed Account 338.4 (Solar Panels) nor Account 338.5 (Collector System), which they understand to be limited to the AC collector system connected to the high side of the inverter power station transformer.

38. Clean Energy Associations further request that the Commission clarify the exact equipment that should be included in the Other Accessory Equipment accounts for both solar and wind, especially given overlap with the proposed Collector System accounts.[70]

39. The Commission also received comments on the NOPR's proposed accounts for GSU. Utility Associations note a potential inconsistency between the NOPR's proposed GSU definition and *Kentucky Utilities Company's* instruction that ''GSU transformers are not used in the generation of power and thus should not be booked to production plant accounts'' (although their costs may be assigned to production through the ratemaking process).[71] The Commission proposed to include GSU transformers on the low side of the collector system in new Solar Production and Wind Production subfunction accounts.[72] Utility Associations ask the Commission to reconcile this proposal with *Kentucky Utilities Company's* instruction.

40. Clean Energy Associations, for their part, suggest that the Commission revise the proposed GSU account definitions to include all transformer devices up to and including the MPT housed in the substation—that is, GSUs on the *high* side of the of the collector system in addition to those on the low side.[73] Clean Energy Associations also cite to *Kentucky Utilities Company,*[74]

[61] Clean Energy Associations NOPR Comments at 6.

[62] *Id.* at 13–14, 19.

[63] 18 CFR part 101, Electric Plant Instruction No. 3, Item 8, Part B.

[64] Clean Energy Associations NOPR Comments at 13–14.

[65] *Id.* at 11–12.

[66] *Id.* at 7–8.

[67] *Id.* at 6–7.

[68] *Id.* at 12.

[69] *Id.* at 8–9.

[70] *Id.* at 17–18.

[71] Utility Associations NOPR Comments at 7–8 (citing *Kentucky Utilities Co.,* 85 FERC ¶ 61,274, at 62,112 n.37 (1998) (Opinion No. 432)).

[72] NOPR, 180 FERC ¶ 61,050 at P 36; *see also id.,* proposed Accounts 338.6 and 338.27.

[73] Clean Energy Associations NOPR Comments at 9–10.

[74] *Id.* at 9 (citing Opinion No. 432, 85 FERC at 62,112 n.36 (''[T]he GSU serves no purpose without

Continued

the Commission's characterization of *Kentucky Utilities Company* in *Pacific Gas & Electric Co.,*[75] and Order No. 827,[76] to argue that the Commission should expand its GSU accounts to include the substation MPT and equipment located beyond the high side of the substation MPT.

41. Clean Energy Associations also request clarification about where and how the substation MPT and equipment located beyond the high side of the substation MPT should be recorded.[77] Clean Energy Associations suggest that the proposed collector system definitions in Accounts 338.5, 338.26, and 387.5 overlap with the description for Station Equipment in existing Account 353.

42. Clean Energy Associations further request clarification related to reporting different types of land and construction costs for non-hydro renewable generation projects.[78] Clean Energy Associations suggest that the Commission define or affirm that it is appropriate to allocate the clearing and grading, permitting, and site civil costs across all direct costs (including both structures and equipment accounts). Specifically, Clean Energy Associations suggest clarifying that it is appropriate to report: (1) improvement and equipment costs comparably to USofA Electric Plant Instruction Nos. 8(A) and 9(A) across all direct costs; (2) permits and privileges in accordance with the booking of the associated plant for which the permit is sought; and (3) land option payments that permit site access, investigation, and permit applications and/or land lease payments during the construction period as privileges and permits under Electric Plant Instruction No. 3, Components of Construction Cost, Item 9, or expenses during construction under Electric Plant Instruction No. 3.

43. In addition, several commenters comment on the NOPR's proposed O&M accounts. Utility Associations suggest that wind and solar plants are simpler to operate than other types of generating plant, with less distinguishable labor, and therefore require fewer O&M accounts to support them than traditional generation assets.[79] They therefore argue that the Commission should limit the creation of new O&M accounts for non-hydro renewables to those listed in Appendix A to their comments. Dominion argues that the Commission should create a robust list of maintenance accounts sufficient to meaningfully segregate costs.[80] Relatedly, Dominion opposes elimination of the miscellaneous expense account for each type of renewable energy in order to preserve a place for expenses that do not clearly fall within other specified accounts. Clean Energy Associations, for their part, agree with the NOPR's proposed O&M accounts, but urge the Commission to clarify that the operations and maintenance costs are related to Plant booked to Production Accounts.[81] Clean Energy Associations raise the need for this clarification because, while the NOPR suggests that its four proposed maintenance accounts ''would allow for the recording of maintenance expense for the associated plant accounts for Solar and Wind Production,'' it also suggests that maintenance of the collector system ''would be similar to the list of items for Account 593 (Maintenance of Overhead Lines) (Major Only)) in the Distribution Expense function'' and describes wind and solar collector systems as ''distributive in design. . . .'' [82]

44. Commenters also responded to the NOPR's request for comment on renaming the Other Production account, how to account for tidal and wave technologies, and hydrogen accounting guidance. Utility Associations oppose the NOPR's proposal to retitle ''Other Production'' to ''Prime Mover Production.'' [83] Utility Associations suggest that retaining the ''Other Production'' account will preserve existing flexibility for recording assets in the face of technological change to record future production assets that do not meet the definition of either prime movers or renewable generating assets.

45. Regarding the NOPR's request for comment on hydrogen technologies, Utility Associations and Carl Pechman both request guidance on accounting for hydrogen facilities.[84] Utility Associations suggest that hydrogen equipment costs should be recorded to Account 339.12 (Miscellaneous Power Plant Equipment) while hydrogen fuel costs should be recorded to Account 547 instead of Account 559.3.[85] And, while Utility Associations believe that it is currently premature to propose new public utility accounts specifically for hydrogen use in the electricity industry, they suggest that new natural gas pipeline accounts are needed to record the investments and operating expenses incurred for hydrogen. They therefore recommend that the Commission update the USofA for natural gas pipelines to include a list of proposed accounts in Appendix B to their comments.[86]

46. Last, regarding the NOPR's request for comment on tidal and wave technologies, Carl Pechman advocates for the Commission to adopt a forward-looking policy of developing accounting provisions for new resources that treats tidal and wave energy activities as a type of other renewable production rather than including it

the generator, and the generator cannot transform power to the transmission-level voltage without the GSU.'')).

[75] *Id.* at 10 (citing *Pacific Gas & Electric Co.,* 106 FERC ¶ 61,144, at P 19 (2004) (''GSU transformers . . . are located at generation stations and [are] used solely to increase the voltage of electric energy produced by generators to the higher voltages necessary for bulk power transmission to load centers.'')).

[76] *Id.* (citing *Reactive Power Requirements for Non-Synchronous Generation,* Order No. 827, 81 FR 40793 (June 23, 2016), 155 FERC ¶ 61,277, at P 13 n.31 (2016) (''[T]he generator substation would be the substation for a wind [or solar] generator that separates the low-voltage collector system from the higher voltage elements of the Interconnection Customer Interconnection Facilities that bring the generator's energy to the Point of Interconnection.'')).

[77] *Id.* at 10–11 (citing NOPR proposed Accounts 338.5, 338.26, and 387.5 (''This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities that are installed beyond the high side of the GSU transformer and the transmission or distribution point of interconnection.'') and 18 CFR part 101, Account 353 (''This account shall include the cost installed of transforming, conversion, and switching equipment used for the purpose of changing the characteristics of electricity in connection with its transmission or for controlling transmission circuits.'')).

[78] *Id.* at 15–17.

[79] Utility Associations NOPR Comments at 7, app. A.

[80] Dominion NOPR Comments at 3.

[81] Clean Energy Associations NOPR Comments at 19–20.

[82] *Id.* (citing NOPR, 180 FERC ¶ 61,050 at P 39 n.78).

[83] Utility Associations NOPR Comments at 7.

[84] Carl Pechman NOPR Comments at 3–4; Utility Associations NOPR Comments at 9–11.

[85] Utility Associations NOPR Comments at 9–11.

[86] Those accounts include: (1) Gas Plant Accounts as Section D—Hydrogen and Other Renewables under Natural Gas Storage and Processing Plant: (a) Land and land rights, (b) Structures and improvements, (c) Hydrogen generation and conversion equipment, (d) Hydrogen storage equipment, (e) Biogas cleaning and conditioning equipment, (f) Other renewable equipment, (g) Compression and power equipment, (h) Measuring and regulating equipment Pipelines, (i) Other equipment Gas Expense; (2) Accounts as Section D—Hydrogen and Other Renewables under Natural Gas Storage Terminaling and Processing Expense: (a) Operation: (i) Operation supervision and engineering, (ii) Hydrogen equipment and storage expense, (iii) Biogas Equipment expense, (iv) Other renewable equipment expense, (v) Compression and power equipment expense, (vi) Measuring and regulating equipment expense, (vii) Pipelines expense, (viii) Other hydrogen and renewables operating expense, and (b) Maintenance: (i) Maintenance supervision and engineering, (ii) Maintenance of structures and improvements, (iii) Maintenance of hydrogen equipment and storage, (iv) Maintenance of biogas and other renewable equipment, (v) Maintenance of compression and power equipment, (vi) Maintenance of measuring and regulating equipment, and (vii) Maintenance of pipelines Maintenance of other equipment. *Id.,* at app. B.

within existing Hydraulic Production accounts.[87]

3. Commission Determination

47. We adopt the NOPR's proposals to create new Production Plant subfunctions and associated accounts, with minor revisions, as discussed below. We disagree with Clean Energy Associations that accounting treatment clarity and transparency can be adequately provided at lesser administrative burden through issuance of accounting guidance instead of creating new renewable subfunctions.[88] The existing Other Production subfunction no longer fully accommodates the specificities of modern renewable generation systems. For instance, no existing Other Production account describes the function that collector systems provide to wind and solar farms—consolidating power from individual turbines or panels before interconnection to the grid. The Commission typically uses accounting guidance to clarify how best to account for an item among several available accounts. Creating new Wind Production, Solar Production, and Other Renewable Production subfunctions is therefore necessary to provide uniformity, consistency, and transparency to reduce risk of errors in accounting and reporting.

48. First, we adopt the NOPR's proposals to separate reporting of wind towers, turbines, foundations, and transformers. Wind towers, turbines, foundations, and transformers are different items with separate purposes and potentially distinct service lives, and should therefore be tracked in separate accounts. While Clean Energy Associations note that these assets are often retired together,[89] we have assessed that these assets may feature distinct depreciation lives supporting separate accounts. We also note that, while vendor invoices are used for recording costs in construction work in progress that becomes plant in service, these invoices do not determine the unitization of plant in service by account under the USofA instructions.[90]

49. We also adopt the NOPR's proposal to create separate GSU and inverter accounts within the Solar Production subfunction. Like the wind turbine, tower, foundation, and transformer accounts, establishing separate accounts is warranted because solar inverters are both separate equipment from, and do not serve the same function as, power station transformers. We note that we do not control how vendors describe the work performed during construction on invoices, and the company unitizes the costs (into retirement units) after the project is closed and records the costs to the appropriate plant accounts. Again, we reiterate that vendor invoices may inform about certain activities performed during construction, but asset unitization is performed when the project is complete and available to be placed in service.

50. In addition, we adopt the NOPR's proposal to create Collector System accounts within the new Solar Production and Wind Production subfunctions. However, we also agree with Clean Energy Associations that the definitions of the proposed collector systems in Account 338.5 and Account 338.26 require certain revisions for consistency.[91] We have revised the Wind Production subfunction Account 338.26 definition (and the Energy Storage function Account 387.5 definition) to mirror the Solar Production collector system definition in Account 338.5.

51. We decline to grant Clean Energy Associations' request that we adopt a separate Production Plant account for the substation.[92] This equipment should be recorded either to Account 353 (Station Equipment) for transmission, or Account 362 (Station Equipment) for distribution. We note that transmission-level substations have historically been, and will remain, considered transmission plant for accounting purposes. While we recognize that this classification may be inconvenient for utilities that otherwise own only Generation or General Plant function assets, the true function of the substation—providing transmission-level voltage to a wire system—governs its classification.

52. However, we grant several of Clean Energy Associations' requests for clarification,[93] and so clarify account text as described herein. First, we have revised the Collector System account definitions to include static capacitors and reactors in the same account because they serve similar functions within collector systems. We note, however, that reactors can serve multiple purposes and are therefore listed in multiple accounts, and should be recorded to the appropriate account based on their operational purpose. Second, we have revised the new Collector System account definitions (Accounts 338.5 and 338.26, as well as Account 387.5 in the new energy storage function) to indicate that: (1) the collector system end-point extends up to, but does not include, the substation prior to interconnection to the grid; and (2) to exclude the cost of transformers and other equipment used to interconnect to transmission or distribution lines. We agree with Clean Energy Associations that this revision is needed to harmonize the solar and wind collector system definitions with our existing accounts for conventional generation. Third, we clarify that DC collector systems should be recorded in the Collector System accounts and revise the Account 338.5 and 338.26 definitions to remove ''once it has been stepped up.'' This revision resolves confusion and furthers the NOPR's intent to include DC collector systems within the Collector System account definitions.

53. Next, we decline to provide an exhaustive list of the equipment that should be recorded in the Other Accessory Electrical Equipment accounts.[94] We reiterate that operational purpose of equipment, rather than equipment name, determines appropriate account classification, and that account equipment lists are meant to be illustrative, not prescriptive. Attempting to provide an exhaustive list of equipment to be recorded to the Other Accessory Electrical Equipment account risks over- and under-inclusion of equipment that should be booked to that account based on functional purpose. To further clarify the purposes of each account, we have revised their definitions and instructions to emphasize that Collector System accounts are for equipment used to transport and consolidate the power fed from individual generation units (solar panels, wind turbines), while the equipment recorded in the Other Accessory Electrical Equipment account supports the generator in the action of generating power.

54. We also adopt the NOPR's proposal to create GSU accounts within the new Wind Production and Solar Production subfunctions. We note that,

[87] Carl Pechman NOPR Comments at 4.

[88] *See* Clean Energy Associations NOPR Comments at 6.

[89] *Id.* at 13, 19.

[90] Costs included in capitalization are explained in 18 CFR part 101, Electric Plant Instruction Nos. 1. Classification of electric plant at effective date of system of accounts (Major utilities), 2. Electric Plant to Be Recorded at Cost, 3. Components of construction cost, and 4. Overhead Construction Costs.

[91] *See* Clean Energy Associations NOPR Comments at 11–12.

[92] *See id.* at 7–8.

[93] *See id.* at 7 (suggesting inclusion of static capacitors and reactors in the same account), 12 (requesting clarification on the collector system end point), 8–9 (requesting clarification on DC collector system recording).

[94] *See id.* at 17–18 (requesting specification of all equipment that should be recorded in Other Accessory Equipment accounts).

despite commenters' suggestion to the contrary,[95] this decision is consistent with Commission precedent in *Kentucky Utilities Company.*[96] There, the Commission considered whether the costs of GSU transformers that step up voltage to the transmission system [97] should be included in transmission rates. It determined that, while the costs of such GSU transformers should be assigned to generators for rate purposes,[98] for accounting purposes ''GSU transformers are not used in the generation of power, and thus should not be booked to production accounts.'' [99]

55. Utility Associations misread *Kentucky Utilities Company* in arguing that it conflicts with the NOPR's proposed GSU account definitions.[100] They question how the proposed Production Plant GSU accounts are consistent with the Commission's statement in *Kentucky Utilities Company* that ''GSU transformers are not used in the generation of power, and thus should not be booked to production accounts.'' [101] This confusion appears to derive from the fact that, unlike traditional generation sources that have a single GSU that steps-up the generator voltage to transmission or distribution levels, renewable plants have two step-up transformers: one GSU located on the low voltage side of the collector system, and another step-up transformer at the substation, that, as in conventional power plants, steps up voltage to connect to the transmission or distribution system. While these assets are both step-up transformers, they serve different functional purposes—and therefore should be reported to different accounts. The GSU transformers at issue in *Kentucky Utilities Company* stepped up voltage to the transmission system.[102] The GSU accounts that we create here for the new Solar Production and Wind Production subfunctions instead are designated for transformers that step up voltage to support the collector systems. These GSUs do not directly interconnect with transmission and distribution power grids. Therefore, *Kentucky Utilities Company* is inapposite. To further clarify the GSU assets that belong in the new Production subfunction accounts, however, we revise Accounts 338.6 and 338.27 (and Energy Storage function Account 387.6) to expressly exclude transformers and other equipment that step up voltage or frequency for the purposes of transmission or distribution. Those assets are more appropriately included in transmission or distribution Account 353 (Station Equipment) or Account 362 (Station Equipment), respectively.

56. Clean Energy Associations also misread *Kentucky Utilities Company.*[103] They argue that *Kentucky Utilities Company* requires the Commission to include the substation MPT and equipment located *beyond* the high side of the substation MPT within the GSU accounts. In doing so, Clean Energy Associations mistake *Kentucky Utilities Company's* holding on rate treatment for one applying to accounting treatment. To the contrary, *Kentucky Utilities Company* expressly forbade recording the cost of GSU equipment beyond the high side of the substation MPT to production plant accounts, even while noting that the GSUs serve generators for rate allocation purposes.[104] Clean Energy Associations' references to *Pacific Gas & Electric Co.* and Order No. 827 are even less relevant.[105] In *Pacific Gas & Electric Co.,* the Commission distinguished that rate case from *Kentucky Utilities Company* in finding that the facilities in the two cases were different and held that bulk transmission lines configured as loop facilities should be allocated to transmission rates. The Commission's order in *Pacific Gas & Electric Co.* said nothing about the accounting treatment for the substation MPT and equipment located beyond the high side of the substation MPT.[106] The Commission's illustrative footnote in Order No. 827, which required non-synchronous generators to provide dynamic reactive power at the high-side of the generator substation,[107] similarly did not disturb our precedent that transformers used to step up voltage for the purpose of transmission or distribution should not be recorded to Production Plant accounts.[108] Therefore, our decision to limit the equipment that is recorded in the new GSU accounts to equipment that steps up voltage on the low side of the MPT is consistent with Commission precedent.

57. In response to Clean Energy Associations' concerns about where to record the substation MPT given alleged conflict between proposed collector system definitions in Accounts 338.5, 338.26, and 387.5 and the Station Equipment in existing Account 353,[109] we note first that Clean Energy Associations misstate the NOPR's proposed collector system definition in Account 338.5.[110] The NOPR's Account 338.5 definition does not overlap with the definition of Account 353. As explained above, we have revised the definitions in Accounts 338.26 and 387.5 to align with the definition in Account 338.5 at Clean Energy Associations' request.[111] This change resolves the overlap with Account 353 that concerned Clean Energy Associations. Equipment at and beyond the substation serve transmission and distribution interconnection functions and should accordingly be recorded in the transmission and distribution accounts.

[95] *See* Clean Energy Associations NOPR Comments at 9–10; Utility Associations NOPR Comments at 7–8.

[96] *See* Opinion No. 432, 85 FERC ¶ 61,274.

[97] *Id.* at 62,109 n.33 (''A GSU transformer is an electrical device that transforms power from a lower voltage to a higher voltage. The GSU transformers in question in this proceeding are those which step-up voltages at the generation level to higher voltages at the [transmission level].'')

[98] *Id.* at 62,112.

[99] *Id.* at 62,112 n.37.

[100] Utility Associations NOPR Comments at 7–8.

[101] Opinion No. 432, 85 FERC at 62,112 n.37.

[102] *Id.* at 62,109 n.33 (specifying that ''[t]he GSU transformers in question in this proceeding are those which step-up voltages at the generation level to higher voltages at the [transmission level].'').

[103] Clean Energy Associations NOPR Comments at 9–10.

[104] *Compare* Opinion No. 432, 85 FERC at 62,112 n.37 (''GSU transformers are not used in the generation of power and thus should not be booked to production plant accounts.'') *with id.* at 62,112 (''[I]t has become increasingly important to recognize the role that GSUs perform in support of generation as it pertains to the allocation of costs.'').

[105] *See* Clean Energy Associations NOPR Comments at 9–10 (citing *Pacific Gas & Electric Co.,* 106 FERC ¶ 61,144 at P 19 (''GSU transformers . . . are located at generation stations and [are] used solely to increase the voltage of electric energy produced by generators to the higher voltages necessary for bulk power transmission to load centers.''); Order No. 827, 155 FERC ¶ 61,277 at P 13 n.31 (''[T]he generator substation would be the substation for a wind [or solar] generator that separates the low-voltage collector system from the higher voltage elements of the Interconnection Customer Interconnection Facilities that bring the generator's energy to the Point of Interconnection.'').

[106] *Pacific Gas & Electric Co.,* 106 FERC ¶ 61,144 at PP 19–20.

[107] Order No. 827, 155 FERC ¶ 61,277 at P 13.

[108] *See* Opinion No. 432, 85 FERC at 62,112 n.37 (''GSU transformers are not used in the generation of power and thus should not be booked to production plant accounts.'').

[109] Clean Energy Associations NOPR Comments at 10–11 (citing NOPR proposed Accounts 338.5, 338.26, and 387.5; 18 CFR part 101, Account 353).

[110] *Compare* NOPR, proposed Account 338.5 (''This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities and devices (such as static capacitors) that are used to transport and consolidate the power fed from individual solar panels, once it has been stepped-up, to the substation prior to interconnection to the grid.'') *with* Clean Energy Associations NOPR Comments at 10–11 (quoting NOPR proposed Accounts 338.5, 338.26, and 387.5 text as: ''This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities that are installed beyond the high side of the GSU transformer and the transmission or distribution point of interconnection.'').

[111] *See supra* P 50; *see also* Clean Energy Associations NOPR Comments at 11–12.

58. Regarding Clean Energy Associations' request for clarification on allocation of clearing and grading, permitting, and site civil costs,[112] we note that Electric Plant Instruction Nos. 3, 8(A), and 9(A) apply to all plant in service and have for several decades. We do not intend to change application of these instructions in this docket. We find the text of these instructions to be sufficient and do not require modification.

59. We also adopt the NOPR's proposal to create O&M accounts to support the new production subfunctions, but we consolidate the specific accounts proposed in response to comments. We are persuaded by Utility Associations' argument that the new generation subfunctions are simpler, and less labor intensive to operate and maintain than steam and nuclear generation, and that therefore the limited rate-setting benefits of separating some of these costs are likely outweighed by the additional burden they create.[113] We believe that the accounts that Utility Associations propose appropriately streamline the O&M accounts while still providing for sufficient detail to meaningfully segregate costs, as requested by Dominion.[114] However, we are also persuaded by Dominion's request to retain the miscellaneous maintenance expense accounts to house expenses that do not clearly fall within other specified accounts, and so create a miscellaneous expense account alongside the others proposed by Utility Associations.

60. As such, we create only those maintenance accounts recommended by the Utility Associations,[115] plus miscellaneous maintenance expense accounts. We therefore also renumber the maintenance accounts. For solar, these accounts will now be numbered as follows: Account 558.7 (Maintenance of Solar Panels, Structures, and Equipment (Major only)), Account 558.8 (Maintenance of Computer Hardware (Major only)), Account 558.9 (Maintenance of Computer Software (Major only)), Account 558.10 (Maintenance of Communication Equipment (Major only)), Account 558.11 (Maintenance of Miscellaneous Solar Generation Plant (Major only)), and Account 558.12 (Maintenance of Solar Generation Plant (Nonmajor only)). For wind, these accounts will now be numbered as follows: Account 558.13 (Operation Supervision and Engineering), Account 558.14 (Wind Turbine Generation and Other Plant Operating Expenses (Major only)), Account 558.15 (Reserved), Account 558.16 (Rents), Account 558.17 (Operation Supplies and Expenses (Nonmajor only)), Account 558.18 (Maintenance Supervision and Engineering (Major only)), Account 558.19 (Maintenance of Wind Turbines, Structures, and Equipment (Major only)), Account 558.20 (Maintenance of Computer Hardware (Major only)), Account 558.21 (Maintenance of Computer Software (Major only)), Account 558.22 (Maintenance of Communication Equipment (Major only)), Account 558.23 (Maintenance of Miscellaneous Wind Generation Plant (Major only)), and Account 558.24 (Maintenance of Wind Generation Plant (Nonmajor only)).

61. In addition, in response to Clean Energy Associations' comment regarding the appropriate function for the new O&M accounts,[116] we clarify that operations and maintenance costs are related to Plant recorded to Production Accounts. Our note that collector systems are distributive in design was intended to be illustrative of how these systems operate and not to indicate that collector systems are part of the Distribution Plant function.

62. Next, we address the subjects on which the NOPR requested comment. We are persuaded by Utility Associations' comment that retaining the ''Other Production'' account will preserve existing flexibility for recording assets in the face of technological change.[117] We therefore retain the ''Other Production'' title for this generation subfunction.

63. In response to comments regarding accounting treatment for tidal and wave resources,[118] we have determined that, because these resources do not fit well within the existing Hydraulic Production subfunction, they should be placed within the new Other Renewable subfunction. Accordingly, in this final rule we create an Other Renewable Production subfunction instead of the NOPR's proposed Other Non-Hydro Renewable Production subfunction.

64. Lastly, as for hydrogen, we agree with Utility Associations that existing and proposed public utility accounts are sufficient for current and anticipated uses of hydrogen as an electric fuel or energy storage medium and that no new public utility accounts are therefore needed.[119] We reiterate that, for either electric generation or energy storage, the recording and reporting of hydrogen specific fuel, equipment, and operations and maintenance expenses should follow the most appropriate account instructions for the function it is used to fulfill.

65. Finally, we will not at this time propose additional guidance for electric utility hydrogen reporting or new natural gas pipeline hydrogen accounts. We will consider the need for such additional guidance and natural gas pipeline USofA revisions in separate proceedings, as necessary.

B. Creation of Energy Storage Function and Accounts

1. NOPR

66. The Commission proposed a new USofA function for energy storage in order to reduce recordkeeping, depreciation, and retirement burden and opportunity for error deriving from energy storage reporting across generation, transmission, and distribution functions.[120] The Commission proposed to structure the new Energy Storage Plant function similar to those for other USofA functions, including the new wind, solar, and other renewable subfunctions, as follows: (1) Account 387.1 (Land and Land Rights); (2) Account 387.2 (Structures and Improvements); (3) Account 387.11 (Miscellaneous Energy Storage Equipment); (4) Account 387.12 (Asset Retirement Costs for Energy Storage); (5) Account 387.5 (Collector System); (6) Account 387.6 (Generator Step-up Transformers (GSU)); and (7) Account 387.7 (Inverters). The Commission also proposed to add a new Account 387.3 (Energy Storage Equipment), which would include the primary energy storage equipment in this function as described in the proposed instructions. In addition, the Commission proposed to create Energy Storage function plant accounts for computer hardware, software, and communication equipment, as described below.

67. The Commission further proposed to create an Energy Storage Expense function within the Operation and Maintenance Expense Chart of

[112] *See* Clean Energy Associations NOPR Comments at 15–17.

[113] *See* Utility Associations NOPR Comments at 7, app. A.

[114] Dominion NOPR Comments at 3.

[115] We correct the naming convention for the accounts for maintenance of communication equipment to refer to ''communication equipment'' rather than ''communications equipment,'' as proposed by Utility Associations, consistent with references to communication equipment accounts throughout this rule and the USofA.

[116] *See* Clean Energy Associations NOPR Comments at 19.

[117] *See* Utility Associations NOPR Comments at 7.

[118] Carl Pechman NOPR Comments at 3–4.

[119] Utility Associations Comments at 9.

[120] NOPR, 180 FERC ¶ 61,050 at PP 44, 48–49.

Accounts, including: (1) Account 577.1 (Operation Supervision and Engineering); (2) Account 577.4 (Rents); (3) Account 577.5 (Operation Supplies and Expenses (Nonmajor only)); (4) Account 578.1 (Maintenance Supervision and Engineering (Major only)); (5) Account 578.2 (Maintenance of Structures (Major only)); (6) Account 578.4 (Maintenance of Collector Systems (Major only)); (7) Account 578.5 (Maintenance of Generator Step-up Transformers (Major only)); (8) Account 578.6 (Maintenance of Inverter Expenses (Major only)); (9) Account 578.10 (Maintenance of Miscellaneous Other Energy Storage Plant (Major only)); (10) Account 578.11 (Maintenance of Other Energy Storage Plant (Nonmajor only)); (11) Account 577.2 (Operation of Energy Storage Equipment (Major only)); (12) Account 577.3 (Storage Fuel); and (13) Account 578.3 (Maintenance of Energy Storage Equipment (Major only)) (as well as the computer hardware, software, and communication equipment accounts described below).[121] Lastly, the Commission proposed reclassifying pumped storage to be recorded within the Energy Storage function of the USofA rather than the Hydraulic Production subfunction.

2. Comments

68. Utility Associations and Clean Energy Associations support the NOPR's proposal to establish a separate function for Energy Storage.[122] Utility Associations, however, propose three revisions regarding Energy Storage related to functional reporting, O&M accounts, and pumped storage.

69. First, Utility Associations request removal of subpart c from Account 387.3, which would require accounting records to show monthly functional activity of storage assets, as well as the NOPR's proposed functional MWh reporting on pages 414–16 of Form No. 1.[123] Utility Associations argue that these requirements conflict with the goal that motivated moving energy storage to a separate function—removing burdensome requirements to track and frequently reclassify storage assets based on changes in function.[124] Rather, Utility Associations recommend following Order No. 784's approach of allowing the accounting for energy storage assets that serve more than one function to follow the allocation decisions made in the relevant rate proceedings.

70. Further, as for the renewables O&M accounts, Utility Associations suggest that, given the relative simplicity of energy storage operations and maintenance, the Commission should limit the energy storage O&M accounts to those listed in Appendix A to their comments.[125]

71. Lastly, Utility Associations recommend against reclassifying pumped storage assets to the new Energy Storage function.[126] Utility Associations explain that pumped storage is not a new technology and fits more naturally within existing hydroelectric generation accounts given similarities in the lives of the facilities, permitting processes, engineering, operation, and staffing.

3. Commission Determination

72. We adopt the NOPR's proposal to establish a separate function for Energy Storage, with a few revisions, discussed below.

73. We agree with Utility Associations that the proposed instructions to subpart c of Account 387.3 and the associated reporting on pages 414–16 of the FERC Form No. 1 are needlessly burdensome and contrary to the purpose of this final rule, and thus remove them.[127]

74. We are also again persuaded by Utility Associations to consolidate the list of O&M accounts that we create for energy storage given the comparative operational simplicity of storage systems,[128] similar to our consolidation of the renewable production O&M accounts.[129] However, we add a miscellaneous maintenance account to the list proposed by Utility Associations. The new accounts will now be as follows: Account 578.2 (Maintenance of Energy Storage Equipment and Structures (Major only)), Account 578.3 (Maintenance of Computer Hardware (Major only)), Account 578.4 (Maintenance of Computer Software (Major only)), Account 578.5 (Maintenance of Communication Equipment (Major only)), Account 578.6 (Maintenance of Miscellaneous Other Energy Storage Plant (Major only)), and Account 578.7 (Maintenance of Other Energy Storage Plant (Nonmajor only)).

75. Last, we are persuaded by Utility Associations' request not to reclassify pumped storage assets to the new Energy Storage function.[130] We agree with Utility Associations that pumped storage assets better fit within existing hydroelectric production accounts given the nature of these assets. This decision is particularly reasonable given our prior decision to streamline the Energy Storage function O&M accounts that we otherwise create in this final rule—the hydroelectric O&M accounts are better tailored to the relative complexity of operating and maintaining pumped storage assets.

C. Accounting Treatment for Renewable Energy Credits

1. NOPR

76. The Commission proposed a number of USofA revisions to codify treatment of RECs.[131] The Commission proposed to retitle General Instruction No. 21 (Allowances) to Allowances and Renewable Energy Credits (RECs), and to update the instruction to include REC reporting and correct typos. These proposed revisions include: (1) proposing to remove the reference to the Clean Air Act in Part A to make the instruction less restrictive and adding reference to the proposed new accounts described below; (2) moving the last sentence of Part A to the beginning of Part B; (3) amending Parts A and C to refer to historical cost to make the instruction consistent with other existing regulatory text in the USofA; [132] (4) correcting Part D to remove an erroneous repeated reference to ''from inventory''; (5) updating the text in Part E to include references to RECs in addition to allowances and in Part F to clarify the inventory accounting for RECs; (6) replacing the language included in existing Part G with language that would instead provide guidance for cases in which allowances and RECs may be considered as prepayments; (7) moving the existing language in Part G addressing penalties to Part H, and removing the reference to the EPA to make the instruction applicable to similar items created by

[121] *Id.* PP 50–51.

[122] Clean Energy Associations NOPR Comments at 5; Utility Associations NOPR Comments at 11.

[123] Utility Associations NOPR Comments at 11–12.

[124] *Id.* at 11 (citing NOPR, 180 FERC ¶ 61,050 at P 45 (explaining that ''[b]y creating one new dedicated storage function, utilities would no longer be required to track and frequently reclassify storage assets based on changes in function, and thus, after the initial burden to implement the changes proposed to be adopted here, the continuing compliance burden would be significantly reduced.'')).

[125] *Id.* at 13, app. A.

[126] *Id.* at 13.

[127] *See id.* at 11–12.

[128] Again we correct the naming convention for the account for maintenance of communication equipment to refer to ''communication equipment'' rather than ''communications equipment,'' as proposed by Utility Associations, consistent with references to communication equipment accounts throughout this rule and the USofA.

[129] *See* Utility Associations NOPR Comments at 13.

[130] *See id.*

[131] NOPR, 180 FERC ¶ 61,050 at P 52.

[132] 18 CFR part 101, General Instruction No. 21 (Allowances).

other regulatory bodies; (8) moving and updating the existing language in Part H to a newly proposed Part I that would address gains and losses on dispositions of allowances and RECs; and (9) adding a new Part J that would address the revenues for RECs associated with the sale of energy.

77. Similarly, the Commission proposed to revise the text to Accounts 158.1 (Allowance Inventory) and 158.2 (Allowances Withheld) to remove references to the Environmental Protection Agency, to reference historical cost, and to include a new note to address prepayments in accordance with the proposed text in General Instruction No. 21.[133] The Commission also proposed to renumber Account 509 (Allowances) to Account 509.1, delete the reference to sulfur dioxide in that account, and create for RECs two new inventory accounts and, under the Steam Power Generation subfunction, two new expense accounts: Account 158.3 (Bundled Renewable Energy Credits Inventory), Account 158.4 (Unbundled Renewable Energy Credits Inventory), Account 509.2 (Bundled Renewable Energy Credits), and Account 509.3 (Unbundled Renewable Energy Credits).[134] And, consistent with the newly proposed instructions in Part I of General Instruction No. 21, the Commission proposed to add Account 411.11 (Gains from the Disposition of RECs) and Account 411.12 (Losses from the Disposition of RECs). Last, the Commission clarified that the Commission considered RECs to be inventory, and noted that Commission accounting and reporting regulations trump conflicting regulations by other accounting authorities.

2. Comments

78. Five parties commented on the NOPR's proposal to codify accounting treatment for RECs. These comments address: (1) the need for revisions or additional accounts to capture information on a broader range of credit mechanisms; (2) placement of REC expense accounts within the USofA; (3) interaction with REC treatment by other governing bodies; and (4) timing questions related to implementation, recovery, and REC expiration. RESA notes the similarities between the NOPR's REC proposals and those recommended by RESA in emphasizing its support for the NOPR overall.[135] PG&E and SDG&E, Utility Associations, and Dominion, however, suggest that the Commission host a technical conference on REC accounting treatment to ensure workability in light of the diversity of REC instruments.[136]

79. Utility Associations and Carl Pechman request revisions to the NOPR's proposals to capture data on utilities' investments in a broader range of environmental credit mechanisms. Utility Associations argue that the proposed retitling of General Instruction No. 21 to Allowances and Renewable Energy Credits and corresponding changes to the text of the instruction and related accounts do not fully reflect the scope of developments in the industry.[137] Rather, Utility Associations recommend that the Commission extend the provisions of the USofA to consider a broader variety of environmental credits that are either used to: (1) avoid or reduce greenhouse gas emissions to the atmosphere; or (2) convey environmental attributes of renewable electricity generation. Utility Associations also suggest that the Commission could use a proposed technical conference to further identify underlying characteristics of these types of instruments that, if met, would qualify for accounting in the same manner as allowances and RECs. Carl Pechman echoes this request, suggesting broadening new account definitions to incorporate Zero Emissions Credits (ZEC) and carbon offsets.[138]

80. Carl Pechman further questions the NOPR's proposal to create a single category for ''allowances'' without more detail.[139] Carl Pechman suggests accounting for such allowances together without distinction misses an opportunity to make valuable data about utility investments in diverse environmental credits available to Public Utility Commissions and other interested stakeholders.

81. Utility Associations also question the placement of the new Allowance expense accounts within the USofA.[140] They recommend that the Commission place the new Allowances account within the Other Power Supply expense subfunction rather than within the Steam Power Generation subfunction. Utility Associations explain that, because RECs, unlike sulfur dioxide allowances, typically do not derive from steam power generation, the Steam Power Generation subfunction is not an appropriate place for those costs to be reported.

82. In addition, some commenters voice concerns about alignment between the NOPR's REC accounting treatment and that of other regulatory bodies. First, several commenters urge the Commission to consider the Financial Accounting Standards Board's ongoing work to address the underlying economic and accounting issues associated with RECs (and other similar instruments) before issuing any final rule or guidance.[141] Utility Associations further advocate for the Commission to strive to align the final rule's requirements and Generally Accepted Accounting Principles (GAAP), to the extent possible, to avoid costs of dual recordkeeping.[142]

83. These commenters also made several suggestions with respect to state ratemaking processes. First, PG&E and SDG&E request that the Commission's general instructions concerning REC reporting under the USofA explicitly clarify that RECs recorded to any FERC account are not intended to impact the retail rates of public utilities.[143] In addition, PG&E and SDG&E request the Commission to explicitly consider instances where regulatory recovery occurs at the time of renewable electric energy production, and reconsider its decision in Order No. 552 precluding the use of inventory methods in Commission filings that reflect the effects of the ratemaking treatment granted by state commissions.[144] PG&E and SDG&E and Utility Associations argue that, where the cost of the REC is bundled with electric energy and recovery from retail customers at the time of renewable electricity energy generation, the Commission should allow the entity to charge the full cost of the bundled product to Account 555 (Purchased Power) at the time of energy usage.[145] Commenters argue that doing so is necessary to ensure that accounting reflects the economic effects of the state ratemaking treatment and that the revenue and expense associated with the RECs match.

84. Further, Utility Associations and Dominion comment on the treatment of expired RECs. Utility Associations request specific guidance on how to report expired RECs that are no longer

[133] NOPR, 180 FERC ¶ 61,050 at PP 53–57.

[134] We use the term ''bundled'' to convey that the RECs are sold with their associated energy, and the term ''unbundled'' to convey that the RECs are sold separately from the energy.

[135] RESA NOPR Comments at 5.

[136] Dominion NOPR Comments at 4–5; PG&E and SDG&E NOPR Comments at 1, 2, 5; Utility Associations NOPR Comments at 18.

[137] Utility Associations NOPR Comments at 19–20.

[138] Carl Pechman NOPR Comments at 1, 4.

[139] *Id.* at 6–9.

[140] Utility Associations NOPR Comments at 20–21.

[141] Carl Pechman NOPR Comments at 9; PG&E and SDG&E NOPR Comments at 1; Utility Associations NOPR Comments at 18–19.

[142] Utility Associations NOPR Comments at 19.

[143] PG&E and SDG&E NOPR Comments at 2–5.

[144] *Id.* at 5.

[145] *Id.;* Utility Associations NOPR Comments at 22–23.

eligible to be used to comply with the applicable renewable energy standard for which they were initially created.[146] They recommend that expired RECs be recorded in Account 411.12, Losses from Disposition of RECs. Dominion emphasizes that RECs may be created or purchased for reasons unrelated to compliance with a specific renewable energy standard, and therefore requests that the Commission adopt an expired RECs definition flexible enough to account for potential REC benefits aside from renewable energy standard application.[147]

85. Utility Associations are also concerned about the flexibility of the NOPR's proposed REC accounting treatment as applied to REC valuation methodologies. Utility Associations worry that the NOPR's proposal to account for RECs as inventory and the issuance of RECs from inventory on a vintage basis using a monthly weighted average of historical cost determination risks mismatch with the variety of REC markets and treatment.[148] Therefore, Utility Associations advocate for the Commission to allow for more flexibility in valuation method to align the Commission's accounting requirements with compliance requirements, business practices, and retail ratemaking treatments.

86. Lastly, noting the diversity in current accounting practices and ratemaking treatment for RECs and other similar instruments across the utility industry, Utility Associations recommend prospective adoption of any final rule or accounting guidance related to RECs in order to allow for an adequate transition period for utilities.[149] Such prospective adoption would, according to Utility Associations, ensure utilities' existing accounting and reporting treatment continues to align with their current ratemaking treatment, while also providing utilities time to transition operational and accounting practices for future impacts on ratemaking and avoiding unnecessary additional cost and complexity.

3. Commission Determination

87. We adopt the NOPR's proposal to codify accounting and reporting treatment for RECs, with a few revisions, discussed below.

88. Despite several commenters' requests,[150] we decline to host a technical conference on REC treatment implementation. We note that the majority of REC comments received on the NOPR do not conflict with the NOPR's proposed REC accounting treatment but rather relate to practicalities of rule implementation and matters outside the area of accounting and reporting. This rule addresses those comments that require deviation from the NOPR's proposals, specifically by broadening relevant instructions in the USofA and creating accounts to accommodate all types of environmental credits. Any accounting and reporting questions that public utilities may have after the issuance of this final rule can be directed to the Commission's Chief Accountant seeking informal or formal accounting guidance in a separate docket.

89. As noted above, we make a few amendments to the NOPR's proposed accounting treatment for RECs. First, in response to Utility Associations' and Carl Pechman's concerns about inclusion of other non-REC environmental items,[151] we have decided to update the name of the proposed Renewable Energy Credit accounts to ''Environmental Credits.'' This retitling will clarify that these accounts are for all types of environmental credits, including ZECs and other allowances, and not just those classified as RECs. These accounts will provide for the recording of any type of environmental credit and allow companies to maintain granularity as needed (*e.g.,* by designating subaccounts or other codes for different types of environmental credits unique to their operations).

90. However, we decline to make additional granular accounting mandatory, as Carl Pechman requests.[152] Such additional granularity is not necessary. The USofA is a standard framework on which a utility's accounting system is to be based in order to support the Commission's statutory responsibilities. However, utilities are not precluded from tailoring their accounting systems to their own needs, which is a standard practice, by using subaccounts or other codes to track more granular detail for managerial or additional regulatory purposes. Therefore, we adopt the NOPR's proposed changes to General Instruction No. 21.

91. Next, we are persuaded by Utility Associations' request to place the expense accounts for Environmental Credits in the Other Power Supply expenses sub-function rather than the Steam Generation subfunction.[153] We agree that, because environmental credits are not generally the product of steam generation, their expenses do not belong in the Steam Generation subfunction. We have accordingly renamed and renumbered these accounts to Account 555.2 (Bundled Environmental Credits) and Account 555.3 (Unbundled Environmental Credits).

92. The other concerns raised by commenters relate to implementation practicalities rather than the NOPR's proposed accounting treatment itself. We believe that this final rule provides sufficient clarification to address these concerns. However, if any concerns remain, they can be addressed through subsequent informal or formal accounting guidance issued by the Commission's Chief Accountant.

93. The first set of these implementation concerns relates to the potential for inconsistency between Commission accounting treatment and that employed by other regulatory bodies.[154] These concerns seem to derive primarily from the NOPR's proposal to treat RECs as inventory.

94. Our decision to treat environmental credits as inventory is consistent with the Commission's long-standing policy, first stated in Order No. 552, of treating emission allowances as inventory, which the Commission has since extended to other environmental credits. Moreover, the primary purpose of our accounting rules is to facilitate ratemaking processes, not necessarily to align with other regulators' accounting practices, which may be designed to serve different objectives. Environmental credits, like allowances, are government-created tradeable property rights designed to promote environmental objectives that store value and are often utilized in a period other than that in which they are acquired. In this sense, environmental credits operate for utilities as an inventoriable asset similar to the value of assets recorded in Account 151 (Fuel Stock (Major Only)), or Account 154 (Plant Materials and Operating Supplies). Generally, if another

[146] Utility Associations NOPR Comments at 21–22.

[147] Dominion NOPR Comments at 4.

[148] Utility Associations NOPR Comments at 21.

[149] *Id.* at 20.

[150] *See* Dominion NOPR Comments at 4–5; PG&E and SDG&E NOPR Comments at 1, 2, 5; Utility Associations NOPR Comments at 18.

[151] Carl Pechman NOPR Comments at 1, 4; Utility Associations NOPR Comments at 19–20.

[152] Carl Pechman NOPR Comments at 6–9.

[153] *See* Utility Associations NOPR Comments at 20–21.

[154] *See id.* at 18–19; Carl Pechman NOPR Comments at 9; PG&E and SDG&E NOPR Comments at 1.

accounting authority's treatment conflicts with the accounting and financial reporting needed by the Commission to fulfill its statutory responsibilities, then the Commission's accounting and reporting regulations prevail.[155] Finally, while this rule directs utilities to treat environmental credits as inventory, we recognize that there may be situations in which utilities have different accounting or rate treatment as required by their state or other regulatory bodies. Utilities can record regulatory assets or liabilities to record any differences between accounting and ratemaking treatment, or maintain separate records to accommodate the accounting treatment required by the different regulatory bodies (though, as for any tariff-driven deviation from standard accounting and FERC Form instructions, utilities must disclose such alternative accounting in their FERC Form reports). We also clarify, in response to PG&E and SDG&E's request,[156] the accounting in this rulemaking is not intended to impact retail rates, as indicated above.

95. Next, we turn to commenters' various timing concerns. We are unpersuaded by Utility Associations' and PG&E and SDG&E's concerns about how to report bundled REC costs that are recovered from retail customers at the time of renewable electricity energy generation.[157] Existing regulatory accounts are readily available when costs incurred in one ratemaking period need to be recovered or expensed in another.[158] Changes to the NOPR's accounting proposal are therefore not needed to address these concerns.

96. As for Utility Associations' concerns about where to record expired RECs,[159] we agree that expired RECs should be recorded in new Account 411.12 (Losses from Disposition of Environmental Credits). This treatment is consistent with the new General Instruction No. 21 Allowances and Environmental Credits, Part I. Similarly, in response to Dominion's concerns about the non-statutory use of expired RECs,[160] we note that General Instruction No. 21, Part I, indicates that losses on speculative trading should be recorded in Account 426.5 (Other Deductions). As such, no further revision to the accounting treatment for environmental credits is warranted to address recording of expired RECs.

97. Regarding Utility Associations' inventory valuation concerns,[161] we note that our preference for weighted average cost has been in place for Allowances since Order No. 552, which the Commission has consistently applied to environmental credits in the decades since. However, we emphasize again that if specific state law or tariff provisions require utilities to use a different inventory method, the economic reality of the transaction governs, with divergence from standard practice noted and explained in the FERC Form Nos. 1 and 3–Q disclosures.

98. Lastly, we clarify for Utility Associations that, as for all final rules, this final rule will apply only prospectively and will allow utilities an adequate transition period, as discussed further below.[162]

D. Creation of Computer Hardware, Software, and Communication Equipment Accounts

1. NOPR

99. The Commission proposed new accounts in each function and subfunction for computer hardware, software, and communication equipment.[163] The USofA was updated in 2005 to include accounts for recording computer hardware, software, and communication equipment owned by regional transmission organizations (RTO), but did not create comparable accounts for non-RTO public utilities and licensees to report these types of assets.[164] Consequently, non-RTO public utilities do not record computer hardware, software, and communication equipment uniformly, with many utilities recording these assets in general accounts (*e.g.,* Account 303 (Miscellaneous Intangible Plant) and Account 391 (Office Furniture and Equipment)). To eliminate ambiguity and ensure greater consistency and transparency in accounting and reporting, the Commission proposed including computer hardware, software, and communication equipment accounts in each different functional area, including the general function.

100. The Commission proposed to add three plant accounts and three maintenance accounts to all functions and subfunctions that currently lack them, including the new Renewable Generation subfunctions and the new Energy Storage function.[165] These accounts are: Accounts 315.1, 324.1, 334.1, 338.9, 338.30, 339.9, 345.1, 351.1, 363.1, 387.8, and 397.1 (Computer Hardware); Accounts 315.2, 324.2, 334.2, 338.10, 338.31, 339.10, 345.2, 351.2, 363.2, 387.9, and 397.2 (Computer Software); Accounts 315.3, 324.3, 334.3, 338.11, 338.32, 339.11, 345.3, 351.3, 363.3, 387.10, and 397.3 (Communication Equipment); Accounts 513.1, 531.1, 544.1, 553.1, 558.13, 558.33, 559.12, 578.7, 592.2, and 935.1 (Maintenance of Computer Hardware (Major only)); Accounts 513.2, 531.2, 544.2, 553.2, 558.14, 558.34, 559.13, 578.8, 592.3, 935.2 (Maintenance of Computer Software (Major only)); and Accounts 513.3, 531.3, 544.3, 553.3, 558.15, 558.35, 559.14, 578.9, 592.4, 935.3 (Maintenance of Communication Equipment (Major only)). The Commission added (Major only) to the account names for existing Transmission Expenses Maintenance Accounts 569.1, 569.2, 569.3, consistent with the proposed accounts. Because the RTO function only exists for RTOs and independent system operators, the Commission did not propose this designation on its accounts (*i.e.,* Accounts 576.2, 576.3, and 576.4). These accounts have the same descriptions, instructions, and items as the existing RTO and Transmission function accounts of the same title.

101. The Commission also proposed adding a new Electric Plant Instruction No. 17, Integrated computer hardware, software, and communication equipment.[166] The instruction explained that where computer hardware, software, and communication equipment is integrated as part of a larger retirement unit, it shall be recorded in the property account of the retirement unit purchased. It further clarified that, if this computer hardware, software, or communication equipment is not integrated, Plant Instruction No. 10 should be followed.

102. Lastly, the Commission sought comment on whether the Commission should also create computer hardware,

[155] *See* Order No. 552, FERC Stats. & Regs. ¶ 30,967 at 30,801 (''If GAAP conflicts with the accounting and financial reporting needed by the Commission to fulfill its statutory responsibilities, then GAAP must yield. GAAP cannot control when it would prevent the Commission from carrying out its duty to provide jurisdictional companies with the opportunity to earn a fair return on their investment and to protect ratepayers from excessive charges and discriminatory treatment.'').

[156] PG&E and SDG&E NOPR Comments at 2–5.

[157] *Id.* at 5; Utility Associations NOPR Comments at 22–23.

[158] *See, e.g.,* Account 182.3 (Other Regulatory Assets) and Account 254 (Other Regulatory Liabilities). These regulatory accounts are designated for amounts that are probable to be included in a different period for purposes of developing the rates.

[159] *See* Utility Associations NOPR Comments at 21–22.

[160] Dominion NOPR Comments at 4

[161] Utility Associations NOPR Comments at 21.

[162] *See id.* at 20.

[163] NOPR, 180 FERC ¶ 61,050 at P 58.

[164] *Accounting & Financial Reporting for Public Utilities Including RTOs,* Order No. 668, 70 FR 77627 (Dec. 30, 2005), FERC Stats. & Regs ¶ 31,199 (2005) (cross-referenced at 113 FERC ¶ 61,276), *rehearing denied,* Order No. 668–A, 71 FR 28513 (May 16, 2006), 115 FERC ¶ 61,080 (2006).

[165] NOPR, 180 FERC ¶ 61,050 at P 59.

[166] *Id.* P 60.

software, and communication accounts for natural gas pipelines, oil pipelines, and centralized service companies.[167]

2. Comments

103. Dominion, Clean Energy Associations, and Utility Associations commented on the NOPR's proposal to create new accounts within existing functions for computer hardware, software, and communication equipment. Dominion and Utility Associations appear to conditionally support the NOPR's proposals, with some requested revisions, while Clean Energy Associations oppose them.[168]

104. Clean Energy Associations question whether the proposed accounts are warranted, alleging that they will add administrative burden with few expected benefits.[169] Clean Energy Associations suggest that these costs could better be recorded to Other Accessory Electric Equipment. In the alternative, Clean Energy Associations suggest that the Commission should confirm through accounting guidance that the scheduled retirements approach that most utilities use for non-structures and improvements related to General Plant may be used for computer hardware, software, and communication equipment Production accounts.

105. Dominion, in contrast, supports the proposed changes regarding computer hardware and communication equipment, but raises three concerns regarding software accounting treatment.[170] First, Dominion believes that software should remain in Account 303 despite the potential for some inconsistency in accounting and reporting of computer software between functions. Second, because software is an intangible asset and does not have a depreciable service life similar to production plant, Dominion argues that it is more appropriate to recognize the amortization of software in Account 404 (Limited Term Plant Amortization) than Account 403 (Depreciation Expense). Third, Dominion asserts that the NOPR's proposed accounting guidance conflicts with recent guidance issued by the Commission's Chief Accountant regarding cloud computing, and Dominion states that it agrees with the guidance in that order.[171] Last, Dominion argues that one function having different instructions on how to handle software does not warrant a change to all other functions and subfunctions.[172] If software is to be recorded to different functions, Dominion believes that the Commission should issue guidance on how to account for software that supports more than one function—specifically, whether to use the General function or whether allocations to the functions are required.

106. Utility Associations also support creation of these new plant accounts, and recommend that balance amounts for computer hardware, software, and communication equipment that can be readily identified as dedicated to a particular function be transferred to the new accounts.[173] However, Utility Associations note that these assets may by nature share functionality, and even if not, it may be difficult to determine that equipment supports a sole functional area. Where computer hardware, software, or communication equipment is not clearly dedicated to a sole function, Utility Associations suggest that it should be recorded in General Plant.

107. In addition, Utility Associations make a number of comments on specific proposed accounts. First, they suggest that the Commission remove item 1 ''Personal Computers'' entirely or rename it ''Computers and Similar Items'' to avoid implying that all personal computers must be tracked functionally.[174] Utility Associations explain that personal computers are generally not tracked functionally due to their short lives, low cost, and frequent transfer among personnel supporting different functional operations. Eliminating or broadening the item would mitigate the large, disproportionate burden that functional tracking of personal computers would require. Next, Utility Associations recommend allowing utilities to use Accounts 356, 358, 365, and 367 to record fiber optic cable used for transmission and distribution purposes. Utility Associations explain that fiber optic cable provides protective capabilities (shield and grounding, vibration and cable failure detection) and, when used for transmission and distribution, has a longer life than other communication devices more consistent with traditional overhead and underground conductors and devices. Therefore, Utility Associations argue that retaining the ability to continue to record fiber optic cable to plant Accounts 356, 358, 365 and 367 better aligns depreciation to its appropriate life span. Last, Utility Associations recommend that the Commission's Chief Accountant amend Accounting Release No. 15, Vintage Year Accounting for General Plant Accounts (AR–15), to allow public utilities currently applying the principles of AR–15 to vintaged General Plant accounts for computer hardware and communication equipment to continue that practice for assets that will now be accounted for in the new functional accounts. Utility Associations explain that this amendment will allow utilities to continue to record ''auto-retirements'' of assets that are fully amortized and eliminate the need to track small individual items of property.

108. Utility Associations and Dominion also responded to the NOPR's request for comment on the need to create computer hardware, software, and communication equipment accounts in the USofA for centralized service companies. Utility Associations recommend adding computer hardware, software, and communication accounts to the USofA and FERC Form No. 60 for centralized service companies to better align their reporting with associated operating companies.[175] Dominion also requests that if software is to be recorded to the different functions, the Commission should issue guidance on how centralized service companies should account for software that supports more than one function—that is, whether the use of the General function would be appropriate or whether allocations to the functions are required.[176]

109. LEPA responded to the NOPR's request for comment on the need to create computer hardware, software, and communication equipment accounts in the USofA for oil pipelines. LEPA opposes creation of such new accounts for oil pipelines, arguing that doing so would create needless burdens for oil pipelines that would far outweigh any perceived benefit.[177]

3. Commission Determination

110. We adopt the NOPR's proposal to create new accounts for computer hardware, software, and communication equipment within existing functions that do not already include them.

111. Several commenters questioned whether it is necessary or warranted to create these new accounts, in all or in

[167] *Id.* P 61.

[168] *See* Clean Energy Associations NOPR Comments at 14–15; Dominion NOPR Comments at 3; Utility Associations NOPR Comments at 14.

[169] Clean Energy Associations NOPR Comments at 14–15.

[170] Dominion NOPR Comments at 3–4.

[171] *Id.* at 4 (citing *Guidance on Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract,* Docket No. AI20–1–000 (Dec. 20, 2019)).

[172] Dominion NOPR Comments at 4.

[173] Utility Associations NOPR Comments at 14.

[174] *Id.* at 14–17.

[175] *Id.* at 18.

[176] Dominion NOPR Comments at 4.

[177] LEPA NOPR Comments at 2–4.

part.[178] First, we disagree with Clean Energy Associations and Dominion that these new accounts are not warranted.[179] We recognize that creating these new accounts may create initial implementation burden for utilities, but we find that separate functional classification of such costs is necessary to improve uniformity, consistency, and transparency in accounting and reporting of such assets and related activities, and to better inform the ratemaking process. Additionally, to address the Utility Associations' comment regarding transfer of existing balance amounts for computer hardware, software, and communication equipment,[180] we clarify that if utilities cannot readily identify functional level of detailed balances of plant with associated accumulated depreciation, such balances may reside in the accounts initially used by the utilities.

112. We also disagree with Dominion's suggestion that software should remain in Account 303 as provided in the prior guidance on cloud computing issued by the Commission's Chief Accountant in Docket No. AI20–1–000.[181] This guidance was consistent with then-available accounts within the USofA. In this prior accounting guidance, the Commission's Chief Accountant specifically stated that utilities should record implementation costs for cloud computing in Account 303 ''*provided such costs are not specifically provided for in other utility plant accounts.*'' [182] In the instant rulemaking, the Commission now provides functional plant accounts specifically designated for software, therefore superseding the prior accounting guidance in Docket No. AI20–1–000. As such, we also reject Dominion's request to provide for amortization of software in Account 404,[183] and instead direct utilities to record associated depreciation expense to Account 403, which includes depreciation for all classes of depreciable electric plant. We also clarify that where software supports more than one function, it can be recorded to Account 397.2 (General Plant Software).

113. To address Utility Associations' comments about computer hardware, software, and communication equipment that serves multiple functions,[184] we clarify that utilities may record such assets based on the assets' predominant use or function, or, alternatively, in the new General Plant accounts. Concerning Utility Associations' comment related to personal computers,[185] we clarify that account lists are illustrative and not prescriptive; personal computers should therefore only be recorded in the functional computer accounts if the specific computer's retirement unit serves that predominant function, such as one issued to a transmission or distribution line worker. In the case of personal computers that are mostly used by employees for general purposes, such computers can be recorded in the new General Plant account.

114. To address Utility Associations' comment about fiber optic cables,[186] we note that the recording of fiber optic cables should follow the same classification criteria as discussed above, and be recorded based on their purpose and function. For example, fiber optic cables used as communication equipment should be recorded in the new functional accounts for communication equipment.

115. To address Utility Associations'[187] and Clean Energy Associations'[188] comments related to the application of vintage accounting as discussed in AR–15, we note that vintage accounting is the same as scheduled retirements approach. The appropriateness of vintage depreciation is considered on a case-by-case basis within depreciation rate case proceedings.

116. Finally, we note Utility Associations and Dominion's comments requesting new accounts or guidance for centralized service companies [189] and LEPA's comments opposing creation of such accounts for oil pipelines.[190] We will consider whether future guidance or amendments to the USofAs for centralized service companies and natural gas companies are warranted.

E. Reporting

1. NOPR

117. To accommodate the proposed changes to the USofA explained above, the Commission proposed to amend FERC Form Nos. 1, 1–F, and 3–Q (electric) to include the new subfunctions for Wind, Solar, and Other Non-Hydro Renewable as well as a new Energy Storage function within the plant and operations and maintenance expense sections of the forms, including the schedules for depreciation.[191] Each subfunction and function would include the accounts as described above. The currently existing functional accounts for energy storage would be removed (Accounts 348, 351, 363, 548.1, 562.1, 570.1, and 584.1) or replaced (Accounts 553.1 and 592.2).

118. The proposed reporting changes to FERC Form Nos. 1, 1–F, and 3–Q (electric) would result in changes to centralized service company reporting in FERC Form No. 60, Schedule XVI—Analysis of Charges for Service—Associate and Non-Associate Companies, because the FERC Form No. 60 summarizes the functional and sub-functional O&M accounts detailed in FERC Form Nos. 1, 1–F, and 3–Q (electric).[192] As such, these proposed changes to FERC Form No. 60 consist of new rows for the summarized totals of the proposed new Energy Storage function and Generation sub-functions O&M accounts.

119. The Commission also proposed to amend FERC Form Nos. 1, 1–F, and 3–Q (electric) to include RECs as part of the instructions and titles wherever allowances are discussed.[193] Further, it proposed to consolidate inputs for both sulfur dioxide and nitrogen oxides (NO_X) in the existing Allowances schedule,[194] to include inputs for both bundled and unbundled RECs, and to amend the related title for Account 509 to read as Account 509.1.[195] The Commission proposed to add separate gain and loss accounts to the statement of income for RECs.[196]

[178] *See* Clean Energy Associations NOPR Comments at 14–15; Dominion NOPR Comments at 3–4; Utility Associations NOPR Comments at 14–17.

[179] *See* Clean Energy Associations NOPR Comments at 14–15; Dominion NOPR Comments at 4 (arguing that one function having different instructions on how to handle software does not warrant a change to all other functions and subfunctions).

[180] *See* Utility Associations NOPR Comments at 14.

[181] *See* Dominion NOPR Comments at 3–4.

[182] *Guidance on Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract,* Docket No. AI20–1–000, at 3 (Dec. 20, 2019) (emphasis added).

[183] *See* Dominion NOPR Comments at 3–4.

[184] *See* Utility Associations NOPR Comments at 14–17.

[185] *See id.*

[186] *See id.* at 15–17.

[187] *Id.*

[188] Clean Energy Associations NOPR Comments at 15.

[189] *See* Dominion NOPR Comments at 3; Utility Associations NOPR Comments at 18.

[190] LEPA NOPR Comments at 2–4.

[191] NOPR, 180 FERC ¶ 61,050 at P 62, App. B: FERC Form Nos. 1/1–F at 204–207, 219, 321–322, FERC Form No. 1 at 227, 336, 352, 354, 401a, FERC Form No. 1–F at 21, 24, FERC Form No. 3–Q (electric) at 208, 324a, 324b.

[192] *Id.* at P 63, App. B: FERC Form No. 60 at 304–305a.

[193] *Id.* at P 64, App. B: FERC Form Nos. 1/1–F at 320, FERC Form No. 1 at 2, 110–111, 120–121, 228a, 229a, FERC Form No. 1–F at 4, 10–11, 15–16.

[194] *Id.* at App. B: FERC Form No. 1 at 228a–229a amended, pages 228b–229b deleted.

[195] *Id.* at App. B: FERC Form Nos. 1/1–F at 320, FERC Form No. 1–F at 15.

[196] *Id.* at App. B: FERC Form Nos. 1/3–Q (electric) at 114, FERC Form No. 1–F at 6.

120. The Commission further proposed to amend FERC Form Nos. 1, 1–F, and 3–Q (electric) to include new plant and maintenance expense accounts for computer hardware, software, and communication equipment within all functions and subfunctions (including the general function).[197] In the Depreciation and Amortization of Electric Plant schedule section B (Basis for Amortization Charges), the Commission proposed to eliminate the first two sentences and the word software from the third sentence as these clauses would no longer be applicable to software.[198]

121. Finally, the Commission proposed to consolidate the several statistical pages for different classes of large production generators into one statistical page to also include hydro and non-hydro renewables.[199] The Commission also proposed to amend the energy storage statistical pages to remove references in the instructions and columns related to cost functionalization.[200]

2. Comments

122. Clean Energy Associations suggest that the NOPR's proposed changes to the USofA and FERC Form No. 1 have the potential to increase the burden on public utilities that are subject to the USofA requirements, but clarify that if public utilities that are subject to the USofA are supportive of the NOPR's proposed reporting changes, it does not object to the additional requirements.[201]

123. Utility Associations note that the NOPR proposed to combine all large generating assets for FERC Form No. 1 reporting purposes into one statistical page.[202] Utility Associations recommend that the Commission keep existing statistical plant pages 402–03 and 406–07 unchanged and instead add new pages for reporting large solar, wind, and other non-hydro renewables larger than 10 MW. Utility Associations argue that, because the vast majority of the reporting requirements on the existing pages are not applicable to solar, wind, and other non-hydro renewable generating assets, consolidating the information for generating plant statistics on one page adds undue complexity that will complicate preparation and review. In addition, echoing their comments on the NOPR's energy storage provisions (that the functional MWh reporting on pages 414–16 of FERC Form No. 1 contradict the NOPR's goal in establishing a new storage function), Utility Associations recommend that the Commission modify FERC Form No. 1 pages 414–16 to eliminate columns d, e, and f, which show functional MWhs delivered.

124. Utility Associations also note a number of ministerial errors in the NOPR related to reporting.[203] Those errors include: (1) proposed line 35.46 on the FERC Form No. 1 and 1–F page should identify 339.13 instead of 338.13; (2) proposed line 10.5 on the FERC Form No. 3–Q page 324a should be re-labeled to remove the word ''Renewables'' from ''Wind Renewables Generation—Maintenance (558.25–558.35)'' to ensure consistent naming convention with proposed lines 10.1, 10.2 and 10.4; (3) the summation referenced in proposed line 21.4 on FERC Form No. 3–Q page 325 should be changed from ''Enter Total of lines 21 thru 21.4'' to ''Enter Total of lines 21 thru 21.3''; and (4) on pages 320–23 of FERC Form No. 1 and 1–F: (a) proposed line 79.15 should be modified to ''Maintenance of Other Accessory Electrical Equipment'' instead of ''Other Accessory Electrical Equipment''; (b) proposed line 79.37 should list Account 558.33 instead of Account 558.31; (c) proposed line 79.38 should list Account 558.34 instead of Account 558.32; (d) proposed line 79.39 should list Account 558.35 instead of Account 558.33; and (e) proposed line 79.40 should list Account 558.36 instead of Account 558.34.

3. Commission Determination

125. We adopt the NOPR's proposed changes to the FERC forms, with minor revisions, discussed below. First, in keeping with other revisions made in this final rule, we update references in FERC Form Nos. 1, 1–F, and 3–Q (electric) to the proposed Other Non-Hydro Renewable subfunction to refer instead to the Other Renewable subfunction. We also update references to RECs in FERC Form Nos. 1, 1–F, and 3–Q (electric) to instead reference environmental credits, as appropriate.

126. In response to Clean Energy Associations' concerns about potential increased burden resulting from the NOPR's proposed reporting requirements,[204] while sensitive to the administrative burdens our rules create, we find that the clarity, transparency, consistency, and uniformity benefits of this final rule, including its reporting requirements, outweigh the potential burdens of reporting.

127. We agree with Utility Associations' request to maintain statistical plant pages 402–03 and 406–07 and instead add new pages for reporting renewable generating assets larger than 10 MW.[205] Accordingly, we add a new renewable generating plant statistical page 404 to FERC Form No. 1. The NOPR's proposal to consolidate these forms was intended to simplify the reporting burden associated with this final rule. After considering Utility Associations' comment, we find that refraining from consolidation better reduces administrative burdens.

128. Lastly, we accept all of Utility Associations' proposed ministerial revisions [206] in order to correctly reflect the Commission's intent in proposing the NOPR and effectuate the purpose of this final rule.

F. Other Issues

1. Account Numbering

a. Comments

129. Utility Associations and Dominion take issue with the number of digits that the NOPR proposed to include for new accounts. Specifically, both commenters recommend using four-digit accounts rather than the five-digit accounts (for example, using 338.1 rather than 338.10) proposed in the NOPR to avoid the cost and time that modifying accounting software to allow for five-digit accounts will require.[207]

b. Commission Determination

130. While we recognize Utility Associations' and Dominion's concerns that the proposed five-digit numbering

[197] *Id.* at P 65, App. B: FERC Form Nos. 1/1–F at 204–207, 320–323, FERC Form No. 3–Q (electric) at 325.

[198] *Id.* at App. B: FERC Form No. 1 at 336.

[199] *Id.* at P 62, App. B: FERC Form No. 1 at 402–03 amended, pages 406–07 deleted.

[200] *Id.* at App. B: FERC Form No. 1 at 414–20.

[201] Clean Energy Associations NOPR Comments at 3.

[202] Utility Associations NOPR Comments at 23–24.

[203] *Id.,* at app. C.

[204] We note that Clean Energy Associations qualified their objection to the NOPR's proposed reporting requirements. *See* Clean Energy Associations NOPR Comments at 3 (''The Clean Energy Associations also note that the extensive changes to the USofA and FERC Form No. 1 proposed in the USofA NOPR actually have the potential to *increase* the burden on public utilities that are subject to the USofA requirements; if public utilities that are subject to the USofA are supportive of the significant reporting changes proposed in the USofA NOPR that they would have to bear, Clean Energy Associations do not object to these additional requirements.''). We also note that Utility Associations, whose members are subject to the USofA, appear to support the reporting proposals. *See* Utility Associations NOPR Comments at 1, 24 (explaining that Utility Associations support the NOPR's provisions ''except as noted in [their] specific comments[,]'' and not otherwise objecting to the NOPR's reporting proposals).

[205] Utility Associations NOPR Comments at 23–24.

[206] *Id.,* at app. C.

[207] Dominion NOPR Comments at 2; Utility Associations NOPR Comments at 6.

increases implementation burdens to update accounting software,[208] we nevertheless find five-digit numbering to be the least burdensome way to implement needed changes because creating these new accounts without using five-digit numbering would require complete overhaul of the USofA's numbering system. In addition, we find that the need for and benefit from these new accounts, as discussed above, justifies the burden caused by the proposed numbering.

2. Issues Beyond the Scope of This Rulemaking

a. Comments

131. Some commenters raise issues that were not addressed in the NOPR. Clean Energy Associations urge the Commission to convene a technical conference, issue guidance, or act on the NOI in Docket No. RM22–2–000 on reactive power compensation issues, and otherwise to confirm that the cost of equipment that supports the production and provision of reactive power service should be used to support reactive power compensation that is based on the current *American Electric Power* methodology.[209] RESA requests that the Commission make additional modifications to the USofA in this or a subsequent rulemaking to include accounts associated with competitive market function activities (*i.e.,* the provision of default supply service).[210] Carl Pechman suggests that the Commission adopt an on-going process to evaluate accounting needs required to support decarbonization of the electric system.[211] In addition, Carl Pechman suggests evaluating whether existing accounting protocols for generation assets provide sufficient fidelity to provide adequate information on capital cost of pollution control and decarbonization investments (such as carbon capture and storage).

b. Commission Determination

132. The NOPR did not propose reforms related to these issues raised by commenters. Therefore, these issues are outside the scope of this proceeding and will not be addressed here.

G. Proposed Compliance Procedures

1. Comments

133. Several commenters request that the rule's accounting and reporting requirements apply prospectively to avoid the need to restate or refile financial statements from prior years.[212] Specifically, Dominion suggests a two-year implementation window between rulemaking issuance and implementation date given the significant time and expense that implementing the rulemaking's changes will require.[213] Utility Associations also request guidance on how utilities should transfer historical balances to the new accounts when implementing the Commission's order, and propose providing for the transfer of the historical balances to the new accounts in the current year without restating balances for prior years and for disclosure in footnotes in reports filed with the Commission, including FERC Form No. 1, describing the amounts transferred.[214]

134. Several commenters also request that the Commission allow utilities to continue to apply the previously approved depreciation rates applicable to the prior accounts in the new accounts until depreciation rates are approved for the new accounts.[215] Utility Associations explain that this would enable the continued depreciation of assets using approved depreciation rates until a utility can propose new rates for review and approval.

135. Last, Utility Associations suggest that the Commission should allow jurisdictional utilities with formula rates to update their formula rates to comply with the Commission's order updating the USofA through a single-issue filing either under FPA section 205 or a compliance filing.[216] Utility Associations note that permitting single-issue filings would allow affected utilities to update their formula rates solely for the purpose of complying with this final rule, thereby providing the necessary clarity that the remainder of the filed rate would not be subject to litigation.

2. Commission Determination

136. We require regulated entities to implement the requirements of this final rule by January 1, 2025. These changes are therefore prospective, as requested.[217] We will not require retroactive reporting in the FERC Form Nos. 1 and 3–Q of these accounting changes, nor restatement of prior years in the initial Forms under implementation of the new accounts. Therefore, public utilities must use the accounting treatment codified in this rule in all applicable filings starting in the first quarter of 2025. We have chosen the January 1, 2025, implementation date despite Dominion's request for two years to implement the changes [218] in order to timely respond to the need for this final rule's changes while providing a reasonable implementation period that coincides with a new accounting and reporting cycle. This extended implementation schedule will also ensure that smaller entities subject to our accounting and reporting requirements have sufficient time to update their accounting and reporting software. In response to Utility Associations' request for guidance on how utilities should transfer historical balances to the new accounts,[219] we agree that the historical balances should be transferred to the new accounts in the current year without restating balances for prior years, and that the amounts transferred should be disclosed in the utilities' FERC Forms filed with the Commission.

137. We agree with commenters that existing depreciation rates should apply to the newly classified plant going forward, to be revisited in a timely manner in the utility's next relevant depreciation rate case.[220] This includes, as noted above, vintage depreciation rates being applied to non-General Plant, and current amortization rates being treated as vintage depreciation with identical rates. We will consider on a case-by-case basis the appropriateness of this depreciation method going forward as with any depreciation rate case, and take into account all of the appropriate information relevant to retirement units in the account, including the accuracy of historic accounting and supplementary property records in contested depreciation rate cases.

138. We also agree with Utility Associations [221] that utilities affected by

[208] *See* Dominion NOPR Comments at 2; Utility Associations NOPR Comments at 6.

[209] Clean Energy Associations NOPR Comments at 5.

[210] RESA NOPR Comments at 5–11.

[211] Carl Pechman NOPR Comments at 2.

[212] *Id.* at 6; Dominion NOPR Comments at 2–3; PG&E and SDG&E NOPR Comments at 1, 5.

[213] Dominion NOPR Comments at 5.

[214] Utility Associations NOPR Comments at 6 (stating that its proposed treatments would be consistent with the treatment that the Commission previously approved in Order No. 784).

[215] Dominion NOPR Comments at 2–3; Utility Associations NOPR Comments at 7.

[216] Utility Associations NOPR Comments at 4–5, 24.

[217] *Id.* at 6; Dominion NOPR Comments at 2–3; PG&E and SDG&E NOPR Comments at 1, 5.

[218] Dominion NOPR Comments at 5.

[219] Utility Associations NOPR Comments at 6 (stating that its proposed treatments would be consistent with the treatment that the Commission previously approved in Order No. 784).

[220] *See* Dominion NOPR Comments at 2–3; Utility Associations NOPR Comments at 7.

[221] *See* Utility Associations NOPR Comments at 4–5, 24 (citing *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 71 FR 43294 July 31, (2006), 116 FERC ¶ 61,057, at PP 191–193, *order on rehearing,* Order No. 679–A, 72

Continued

this final rule may seek to update their rates on a single-issue basis given the limited scope of the requirements in this final rule.[222] We therefore will allow jurisdictional utilities with formula rates to seek to update their formula rates to comply with this rule through either a single-issue filing under FPA section 205 or as part of a utility's section 205 filing to update formula rates involving other matters. We note, however, that, as we do not issue this rule under FPA section 206, FPA section 206 compliance filings are neither a required nor appropriate response to this final rule; compliance rather requires appropriate accounting for items subject to the accounting treatment in rate filings. We also emphasize that, as for other accounting rulemakings, nothing in this rule should be construed as pre-granting authority for rate recovery in a rate proceeding.[223]

V. Information Collection Statement

139. The information collection requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[224] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[225] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

140. This final rule requires jurisdictional entities as detailed in 18 CFR part 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provision of the Federal Power Act, General Instructions) to update, modify, and add accounts. The updates within the USofA are also required in the respective forms (FERC Form Nos. 1, 1–F, 3–Q (electric), and 60) that are filed with the Commission.

141. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 via email (*DataClearance@ferc.gov*) or telephone ((202) 502–8663).

142. *Title:* Annual Report of Major Electric Utilities, Licensees, and Others (FERC Form No. 1), Annual Report for Nonmajor Public Utilities and Licensees (FERC Form No. 1–F), Quarterly Financial Report of Electric Utilities, Licensees (FERC Form No. 3–Q (electric)), Annual Reports of Centralized Service Companies (FERC Form No. 60).

Action: Revision of collections of information in accordance with Docket No. RM21–11–000.

OMB Control Nos.: 1902–0021 (FERC Form No. 1) and 1902–0029 (FERC Form No. 1–F), 1902–0205 (FERC Form No. 3–Q (electric)), and 1902–0215 (FERC Form No. 60).

Respondents: Public utilities and licensees and centralized service companies who are not exempt or waived from filing per 18 CFR parts 141 and 369.

Frequency of Information Collection: Annually (FERC Form Nos. 1, 1–F, and 60); quarterly (FERC Form No. 3–Q).

Necessity of Information: The reforms in this final rule adjust the USofA to account for changes in the industry, particularly around renewable generation.

Internal Review: The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

143. The Commission estimates a one-time burden due to the revisions in FERC Form Nos. 1, 1–F, 3–Q (electric), and 60 reflected in the final rule in Docket No. RM21–11–000, but estimates that the ongoing burden following the implementation will be consistent with the current collection estimates. The burden estimates below are included in two tables, the first table showing the one-time implementation burden required to update, add, and modify accounts related to the final rule and the second table showing the ongoing annual burden to record and report on each account in the FERC Form Nos. 1, 1–F, 3–Q (electric), and 60.

144. The one-time implementation burden includes updating, adding, and modifying accounts to be compliant with the final rule in Docket No. RM21–11–000. This includes updates to FERC Form Nos. 1, 1–F, 3–Q (electric), and 60 for the creation of new accounts and production subfunctions for wind, solar, and other renewable generating assets; establishment of a new functional class for energy storage accounts; codification of the accounting treatment of environmental credits; and creation of new accounts within existing functions for computer hardware, software, and communication equipment. The Reporting section IV.E of this document indicates which forms and pages will be affected by the categorized proposed changes.

145. The estimates below were calculated using previous final rules combined with the Commission's best estimate of the required effort to update, modify, or add accounts within the USofA. We estimate that, on average, it will take 20 minutes to create or transition an account to comply with the requirements listed in this final rule. FERC Form No. 1 requires 132 account changes, FERC Form No. 1–F requires 132 account changes, and FERC Form No. 60 requires 11 account changes. The changes to FERC Form No. 3–Q (electric) are reflected in the calculations for FERC Form No. 1 and 1–F because the quarterly reports are generally a subset of the annual filings required by FERC Form No. 1 and 1–F. The changes above are reflected in the one-time implementation burden estimate listed in Table 1 below.[226]

FR 1152 (Jan. 10, 2007), 117 FERC ¶ 61,345 (2006), *order on rehearing,* 119 FERC ¶ 61,062 (2007)).

[222] *See Indicated RTO Transmission Owners,* 161 FERC ¶ 61,018, at PP 13–14 (2017); s*ee also See Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes,* Order No. 864, 84 FR 65281 (Nov. 7, 2019), 169 FERC ¶ 61,139, at PP 2, 18 (2019), *order on rehearing,* Order No. 864–A, 85 FR 27681 (May 11, 2020), 171 FERC ¶ 61,033 (2020).

[223] *See Accounting, Financial Reporting, & Rate Filing Requirements for Asset Retirement Obligations,* Order No. 631, 68 FR 19610 (Apr. 21, 2003), 103 FERC ¶ 61,021, at P 64 (2003).

[224] 44 U.S.C. 3507(d).

[225] 5 CFR 1320.11.

[226] The burden numbers in the table are rounded to 1 decimal place, and the costs are rounded to the nearest dollar.

TABLE 1—RM21–11–000 FINAL RULE—ONE-TIME IMPLEMENTATION BURDEN, IN YEAR 1

Requirement	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [227] (4)	Total annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Form No. 1	217	1	217	44 hrs.; $4,004	9,548 hrs.; $868,868	$4,004
Form No.1–F	2	1	2	44 hrs.; $4,004	88 hrs.; $8,008	4,004
Form No. 3–Q electric [228]	221	3	663	0 hrs.; $0	0 hrs.; $0	0
Form No. 60	42	1	42	3.7 hrs.; $336.70	155.4 hrs.; $14,141.40	336.70
Total for Implementation Burden.			924		9,791.4 hrs.; $891,017.40	

146. The Commission estimates that the ongoing burden in years 2 and beyond will be consistent with the current burden estimates related to FERC Form Nos. 1, 1–F, 3–Q (electric), and 60 because, although the accounts are changing, the data historically has been recorded and documented under different account names: therefore, after the initial implementation of the changes, respondents will likely revert to the current burden estimates. The estimated ongoing burden is shown in Table 2 below.

TABLE 2—RM21–11–000 FINAL RULE—ANNUAL ONGOING BURDEN (CURRENT), STARTING IN YEAR 2

Requirement	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [229] (4)	Total annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Form No. 1	217	1	217	1,182 hrs.; $107,562	256,494 hrs.; $23,340,954	$107,562
Form No.1–F	2	1	2	136 hrs.; $12,376	272 hrs.; $24,752	12,376
Form No. 3–Q electric	221	3	663	168 hrs.; $15,288	111,384 hrs.; $10,135,944	45,864
Form No. 60	42	1	42	78 hrs.; $7,098	3,276 hrs.; $298,116	7,098
Total Ongoing Burden (current)			924		371,426 hrs.; $33,799,766	

147. In this final rule, besides the noted revisions, the Commission used the numbers provided in the NOPR.

VI. Environmental Analysis

148. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[230] No environmental consideration is necessary for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[231] or that addresses accounting.[232] This final rule addresses accounting. In addition, this final rule involves information gathering, analysis, and dissemination. Therefore, this final rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

VII. Regulatory Flexibility Act

149. The Regulatory Flexibility Act of 1980 (RFA) [233] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[234] The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[235] electric generators definitions of ''small'' range from 250–1,150 employees based on the type of generation. For the purpose of our analysis, we use the 1150 employee threshold NAICS Code: 221115 Wind Electric Power Generation (this will cover all categories of electric generators) that is used for solar, wind, geothermal, biomass, and ''other'' generators because the proposed rules accounting changes are particularly relevant for these types of generation.

150. In our analysis, we utilized previous submissions of the FERC Form Nos. 1,[236] 1–F,[237] 3–Q (electric),[238] and 60 [239] filers to create populations of companies to determine the number of small entities. The Commission found that, of this population, approximately 88% percent of companies filing FERC Form No. 1, 50% of companies filing

[227] The average burden and cost per response is calculated using the hourly wage figures for FERC staff. The Commission estimates that the costs for the Commission are comparable to those in industry. Commission staff average salary plus benefits totals $188,922 or $91 per hour.

[228] The Commission assumes that the one-time burden for the FERC Form No. 3–Q is incorporated into the calculation of FERC Form No. 1 because quarterly filings are typically a subset of the annual filings.

[229] The average burden and cost per response is calculated using the hourly wage figures for FERC staff. The Commission estimates that the costs for the Commission are comparable to those in industry. Commission staff average salary plus benefits totals $188,992 or $91 per hour.

[230] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[231] *See* 18 CFR 380.4(a)(5).

[232] *See id.* 380.4(a)(16).

[233] 5 U.S.C. 601–612.

[234] *Id.* 603(c).

[235] 13 CFR 121.201.

[236] The total population of 2020 FERC Form No. 1 filers totaled 221. We used a statistical sample size of 67 companies that produces a 95% confidence level.

[237] The total population of 2020 FERC Form No. 1–F filers totaled 2.

[238] The FERC Form No. 3–Q are quarterly filings, which are typically a subset of the annual filings. The Commission assumes that the 3–Q filers are generally consistent with FERC Form No. 1 filers.

[239] The total population of 2020 FERC Form No. 60 filers totaled 42. We used a statistical sample size of 29 companies that produces a 95% confidence level.

FERC Form No. 1–F, and approximately 69% of companies filing FERC Form No. 60, qualify as ''small'' using the definition provided by SBA. The Commission believes that this rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

151. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' [240] We do not consider the estimated cost to be a significant economic impact. As a result, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Document Availability

152. 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*).

153. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

154. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

These regulations are effective January 1, 2025. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

[240] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,* at 18 (May 2012), *https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.*

List of Subjects in 18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform system of accounts.

By the Commission.

Issued: June 29, 2023

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends Part 101, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 2. Under ''General Instructions'', revise Instruction 21 to read as follows:

General Instructions

* * * * *

21. *Allowances and environmental credits.*

A. Public utilities owning allowances and environmental credits for operational purposes, shall account for such allowances and environmental credits at historical cost in account 158.1, Allowance Inventory, account 158.2, Allowances Withheld, account 158.3, Bundled Environmental Credits Inventory, or account 158.4, Unbundled Environmental Credits Inventory, as appropriate.

B. Allowances and environmental credits acquired for speculative purposes shall be accounted for in account 124, Other Investments. When purchased allowances and environmental credits acquired for speculative purposes become eligible for use in different years, and the allocation of the purchase cost cannot be determined by fair value, the purchase cost allocated to allowances and environmental credits of each vintage shall be determined through use of a present-value based measurement. The interest rate used in the present-value measurement shall be the utility's incremental borrowing rate, in the month in which the allowances and environmental credits are acquired, for a loan with a term similar to the period that it will hold the allowances and environmental credits and in an amount equal to the purchase price.

C. The underlying records supporting operational allowances and environmental credits recorded in account 158.1, account 158.2, account 158.3, and account 158.4 shall be maintained in sufficient detail at historical costs and provide the number of allowances and environmental credits and the related cost by vintage year, including allowances and environmental credits acquired at zero cost.

D. Issuances from inventory included in account 158.1, account 158.2, account 158.3, and account 158.4 shall be accounted for on a vintage basis using a monthly weighted-average method of historical cost determination. The cost of eligible allowances and environmental credits not used in the current year, shall be transferred to the vintage for the immediately following year.

E. Account 158.1 shall be credited and account 509, Allowances, debited concurrent with the monthly remittance of the allowances to be charged to expense based on each month's emissions. Account 158.3 and account 158.4 shall be credited and account 555.2, Bundled Environmental Credits, and account 555.3, Unbundled Environmental Credits, debited, respectively, so that the cost of the environmental credits to be remitted for the year is charged to expense based on each month's usage. This may, in certain circumstances, require allocation of the cost between months on a fractional basis.

F. In any period in which actual emissions exceed the amount allowable based on eligible allowances owned, the utility shall estimate the cost to acquire the additional allowances needed and charge account 158.1 with the estimated cost and credit the proper liability account. In any period in which a utility records its estimated amount of required environmental credits, the utility shall debit account 158.3 or account 158.4 with the estimated cost and credit the proper liability account. When differences between the estimated and actual costs become known, the adjustments should be made through account 158.1, account 158.3, and account 158.4, as well as account 509, account 555.2, and account 555.3 within a single month, as appropriate.

G. When a prepayment is made for allowances or environmental credits, the payment is debited to account 165, Prepayments. This accounting is not intended to influence the outcome of any rate treatment.

H. Penalties assessed by any authoritative agencies shall be charged to account 426.3, Penalties.

I. Gains on dispositions of allowances and environmental credits, other than

those held for speculative purposes, shall be accounted for as follows. First, if there is uncertainty as to the regulatory treatment, the gain shall be deferred in account 254, Other Regulatory Liabilities, pending resolution of the uncertainty. Second, if there is certainty as to the existence of a regulatory liability, the gain will be credited to account 254, with subsequent recognition in income when reductions in charges to customers occur or the liability is otherwise satisfied. Third, all other gains will be credited to account 411.8, Gains from Disposition of Allowances, or account 411.11, Gains from Disposition of Environmental Credits. Losses on disposition of allowances and environmental credits, other than those held for speculative purposes, shall be accounted for as follows. Losses that qualify as regulatory assets shall be charged directly to account 182.3, Other Regulatory Assets. All other losses shall be charged to account 411.9, Losses from Disposition of Allowances, or account 411.12, Losses from Disposition of Environmental Credits. (*See* Definition No. 31.) Gains or losses on disposition of allowances and environmental credits held for speculative purposes shall be recognized in account 421, Miscellaneous Nonoperating Income, or account 426.5, Other Deductions, as appropriate.

J. Revenues for environmental credits associated with the sale of energy shall be recorded in the appropriate operating revenue account.

* * * * *

■ 3. Under ''Electric Plant Instructions'', add Instruction 17 to read as follows:

Electric Plant Instructions

* * * * *

17. *Integrated computer hardware, software, and communication equipment.* Where computer hardware, software, and communication equipment is integrated as part of a larger retirement unit, it shall be recorded in the property account of the retirement unit purchased. This shall be done consistently with electric plant instruction 10.

■ 4. In the list of accounts under ''Under Balance Sheet Chart of Accounts'', under ''Assets and other debits,'' under section 3 ''Current and Accrued Assets'', add accounts 158.3 and 158.4 to read as follows:

Balance Sheet Chart of Accounts

* * * * *

3. Current and Accrued Assets

* * * * *

158.3 Bundled environmental credits inventory.

158.4 Unbundled environmental credits inventory.

* * * * *

■ 5. Under Balance Sheet Accounts:

■ i. Revise Accounts 108, 111, 158.1, and 158.2; and

■ ii. Add accounts 158.3 and 158.4.

The additions and revisions read as follows:

Balance Sheet Accounts

* * * * *

108 Accumulated provision for depreciation of electric utility plant (Major only).

A. This account shall be credited with the following:

(1) Amounts charged to account 403, Depreciation Expense, or to clearing accounts for current depreciation expense for electric plant in service.

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in electric plant in service in a separate subaccount.

(3) Amounts charged to account 421, Miscellaneous Nonoperating Income, for depreciation expense on property included in account 105, Electric Plant Held for Future Use. Include, also, the balance of accumulated provision for depreciation on property when transferred to account 105, Electric Plant Held for Future Use, from other property accounts. Normally account 108 will not be used for current depreciation provisions because, as provided herein, the service life during which depreciation is computed commences with the date property is includible in electric plant in service; however, if special circumstances indicate the propriety of current accruals for depreciation, such charges shall be made to account 421, Miscellaneous Nonoperating Income.

(4) Amounts charged to account 413, Expenses of Electric Plant Leased to Others, for electric plant included in account 104, Electric Plant Leased to Others.

(5) Amounts charged to account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work, or to clearing accounts for current depreciation expense.

(6) Amounts of depreciation applicable to electric properties acquired as operating units or systems. (See electric plant instruction 5.)

(7) Amounts charged to account 182, Extraordinary Property Losses, when authorized by the Commission.

(8) Amounts of depreciation applicable to electric plant donated to the utility.

(The utility shall maintain separate subaccounts for depreciation applicable to electric plant in service, electric plant leased to others and electric plant held for future use.)

B. At the time of retirement of depreciable electric utility plant, this account shall be charged with the book cost of the property retired and the cost of removal and shall be credited with the salvage value and any other amounts recovered, such as insurance. When retirement, costs of removal and salvage are entered originally in retirement work orders, the net total of such work orders may be included in a separate subaccount hereunder. Upon completion of the work order, the proper distribution to subdivisions of this account shall be made as provided in the following paragraph.

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant:

(1) Steam production,
(2) Nuclear production,
(3) Hydraulic production,
(4) Solar production,
(5) Wind production,
(6) Other renewable production,
(7) Other production,
(8) Transmission,
(9) Distribution,
(10) Regional Transmission and Market Operation,
(11) Energy Storage Plant, and
(12) General.

These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification:

(a) The amount of accrual for depreciation,
(b) The book cost of property retired,
(c) Cost of removal,
(d) Salvage, and
(e) Other items, including recoveries from insurance.

Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of plant recorded in account 108, Accumulated Provision for Depreciation of Electric Utility Plant (Major only).

D. When transfers of plant are made from one electric plant account to another, or from or to another utility department, or from or to nonutility

property accounts, the accounting for the related accumulated provision for depreciation shall be as provided in electric plant instruction 12.

E. The utility is restricted in its use of the accumulated provision for depreciation to the purposes set forth above. It shall not transfer any portion of this account to retained earnings or make any other use thereof without authorization by the Commission.

* * * * *

111 Accumulated provision for amortization of electric utility plant (Major only).

A. This account shall be credited with the following:

(1) Amounts charged to account 404, Amortization of Limited-Term Electric Plant, for the current amortization of limited-term electric plant investments.

(2) Amounts charged to account 421, Miscellaneous Nonoperating Income, for amortization expense on property included in account 105, Electric Plant Held for Future Use. Include also the balance of accumulated provision for amortization on property when transferred to account 105, Electric Plant Held for Future Use, from other property accounts. See also paragraph A(2), account 108, Accumulated Provision for Depreciation of Electric Utility Plant.

(3) Amounts charged to account 405, Amortization of Other Electric Plant.

(4) Amounts charged to account 413, Expenses of Electric Plant Leased to Others, for the current amortization of limited-term or other investments subject to amortization included in account 104, Electric Plant Leased to Others.

(5) Amounts charged to account 425, Miscellaneous Amortization, for the amortization of intangible or other electric plant which does not have a definite or terminable life and is not subject to charges for depreciation expense, with Commission approval.

(The utility shall maintain subaccounts of this account for the amortization applicable to electric plant in service, electric plant leased to others and electric plant held for future use.)

B. When any property to which this account applies is sold, relinquished, or otherwise retired from service, this account shall be charged with the amount previously credited in respect to such property. The book cost of the property so retired less the amount chargeable to this account and less the net proceeds realized at retirement shall be included in account 421.1, Gain on Disposition of Property, or account 421.2, Loss on Disposition of Property, as appropriate.

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for amortization. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant: (1) Steam production; (2) nuclear production; (3) hydraulic production; (4) solar production; (5) wind production; (6) other renewable production; (7) other production; (8) transmission; (9) distribution; (10) regional transmission and market operation; (11) energy storage plant; and (12) general. These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification (a) the amount of accrual for amortization, (b) the book cost of property retired, (c) cost of removal, (d) salvage, and (e) other items, including recoveries from insurance.

D. The utility is restricted in its use of the accumulated provision for amortization to the purposes set forth above. It shall not transfer any portion of this account to retained earnings or make any other use thereof without authorization by the Commission.

* * * * *

158.1 Allowance inventory.

A. This account shall include the cost of allowances owned by the utility and not withheld by any authoritative agency. *See* General Instruction No. 21 and account 158.2, Allowances Withheld.

B. This account shall be credited and account 509, Allowances, shall be debited concurrent with the monthly emissions.

C. Separate subdivisions of this account shall be maintained so as to separately account for those allowances usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the historical cost.

(Note: For prepayments of allowances, see General Instruction No. 21.)

158.2 Allowances withheld.

A. This account shall include the cost of allowances owned by the utility but withheld by any authoritative agency. (*See* General Instruction No. 21.)

B. The inventory cost of the allowances released by any authoritative agency for use by the utility shall be transferred to account 158.1, Allowance Inventory.

C. The underlying records of this account shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the historical cost.

158.3 Bundled environmental credits inventory.

A. This account shall include the cost of environmental credits owned by the utility, bundled with energy. See General Instruction No. 21.

B. This account shall be credited and account 555.2, Bundled Environmental Credits, shall be debited concurrent with the monthly use of environmental credits.

C. Separate subdivisions of this account shall be maintained so as to separately account for those environmental credits usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each environmental credit included; the origin of each environmental credit; and the historical cost.

(Note: For prepayments of environmental credits, see General Instruction No. 21.)

158.4 Unbundled environmental credits inventory.

A. This account shall include the cost of environmental credits owned by the utility, not considered bundled with energy. See General Instruction No. 21.

B. This account shall be credited and account 555.3, Unbundled Environmental Credits, shall be debited concurrent with the monthly use of environmental credits.

C. Separate subdivisions of this account shall be maintained so as to separately account for those environmental credits usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each environmental credit included; the origin of each environmental credit; and the historical cost.

(Note: For prepayments of environmental credits, see General Instruction No. 21.)

* * * * *

■ 6. In the list of accounts under ''Electric Plant Chart of Accounts'':

■ i. Under section 2.a, add accounts 315.1, 315.2, and 315.3;

■ ii. Under section 2.b, add accounts 324.1, 324.2, and 324.3;

■ iii. Under section 2.c, add accounts 334.1, 334.2, and 334.3;

■ iv. Redesignate section 2.d, ''other production'', consisting of accounts 340 through 348, as section 2.g;
■ v. Add a new section 2.d, ''solar production'', section 2.e, ''wind production'', and section 2.f, ''other renewable production'';
■ vi. Under newly designated section 2.g, ''other production'', add accounts 345.1, 345.2, and 345.3, and remove and reserve account 348;
■ vii. Under section 3 ''Transmission Plant'', add accounts 351.1, 351.2, and 351.3;
■ viii. Under section 4 ''Distribution Plant'', remove and reserve account 363 and add accounts 363.1, 363.2, and 363.3;
■ ix. Redesignate section 6, ''General Plant'', consisting of accounts 389 through 399.1, as section 7;
■ x. Add a new section 6, ''Energy Storage Plant'';
■ xi. Transfer account 387 under section 5 ''Regional Transmission and Market Operation Plan,'' to newly created section 6, ''Energy Storage Plant'';
■ xii. Add accounts 387.1 through 387.12 to newly created section 6, ''Energy Storage Plant'';
■ xiii. Under newly redesignated section 7, ''General Plant'', remove and reserve account 397; and
■ xiv. Add Accounts 397.1, 397.2, and 397.3 to newly redesignated section 7, ''General Plant'';

* * * * *

The revisions and additions read as follows:

Electric Plant Chart of Accounts

* * * * *

2. Production Plant
a. steam production

* * * * *

315.1 Computer hardware.
315.2 Computer software.
315.3 Communication equipment.

* * * * *

b. nuclear production

* * * * *

324.1 Computer hardware.
324.2 Computer software.
324.3 Communication equipment.

* * * * *

c. hydraulic production

* * * * *

334.1 Computer hardware.
334.2 Computer software.
334.3 Communication equipment.

* * * * *

d. solar production
338.1 Land and land rights.
338.2 Structures and improvements.
338.3 [Reserved].
338.4 Solar panels.
338.5 Collector system.
338.6 Generator step-up transformers (GSU).
338.7 Inverters.
338.8 Other accessory electrical equipment.
338.9 Computer hardware.
338.10 Computer software.
338.11 Communication equipment.
338.12 Miscellaneous power plant equipment.
338.13 Asset retirement costs for solar production.
e. wind production
338.20 Land and land rights.
338.21 Structures and improvements.
338.22 [Reserved].
338.23 Wind turbines.
338.24 Wind towers and fixtures.
338.25 [Reserved].
338.26 Collector system.
338.27 Generator step-up transformers (GSU).
338.28 Inverters.
338.29 Other accessory electrical equipment.
338.30 Computer hardware.
338.31 Computer software.
338.32 Communication equipment.
338.33 Miscellaneous power plant equipment.
338.34 Asset retirement costs for wind production.
f. other renewable production
339.1 Land and land rights.
339.2 Structures and improvements.
339.3 Fuel holders.
339.4 Boilers.
339.5 [Reserved].
339.6 Generators.
339.7 [Reserved].
339.8 Other accessory electrical equipment.
339.9 Computer hardware.
339.10 Computer software.
339.11 Communication equipment.
339.12 Miscellaneous power plant equipment.
339.13 Asset retirement costs for other renewable production.
g. other production
340 Land and land rights.
341 Structures and improvements.
342 Fuel holders, producers, and accessories.
343 Prime movers.
344 Generators.
345 Accessory electric equipment.
345.1 Computer hardware.
345.2 Computer software.
345.3 Communication equipment.
346 Miscellaneous power plant equipment.
347 Asset retirement costs for other production plant.
348 [Reserved].
3. Transmission Plant

* * * * *

351.1 Computer hardware.
351.2 Computer software.
351.3 Communication equipment.

* * * * *

4. Distribution Plant

* * * * *

363 [Reserved].
363.1 Computer hardware.
363.2 Computer software.
363.3 Communication equipment.

* * * * *

6. Energy Storage Plant
387 [Reserved].
387.1 Land and land rights.
387.2 Structures and improvements.
387.3 Energy storage equipment.
387.4 [Reserved].
387.5 Collector system.
387.6 Generator step-up transformers (GSU).
387.7 Inverters.
387.8 Computer hardware.
387.9 Computer software.
387.10 Communication equipment.
387.11 Miscellaneous energy storage equipment.
387.12 Asset retirement costs for energy storage.
7. General Plant

* * * * *

397 [Reserved].
397.1 Computer hardware.
397.2 Computer software.
397.3 Communication equipment.

* * * * *

■ 7. In the section ''Balance Sheet Accounts,'' under ''Electric Plant Accounts'':
■ i. Add Accounts 315.1, 315.2, 315.3, 324.1, 324.2, 324.3, 334.1, 334.2, 334.3, 338.1 through 338.13, 338.20 through 338.34, 339.1 through 339.13, and 345.1 through 345.3;
■ ii. Accounts 348 and 351 are removed and reserved;
■ iii. Accounts 351.1, 351.2, and 351.3 are added;
■ iv. Account 363 is removed and reserved;
■ v. Accounts 363.1, 363.2, 363.3, 387, and 387.1 through 387.12 are added;
■ vi. Account 397 is removed and reserved; and
■ vii. Accounts 397.1, 397.2, and 397.3 are added;

The revisions and additions read as follows:

Electric Plant Accounts

* * * * *

315.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

315.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

315.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

324.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

324.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

324.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

334.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

334.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

334.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

338.1 Land and land rights.

This account shall include the cost of land and land rights used in connection with solar power generation. (See electric plant instruction 7.)

338.2 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with solar power generation. (See electric plant instruction 8.)

338.3 [Reserved].

338.4 Solar panels.

This account shall include the installed cost of the racks, solar panels, solar tracking system, and other equipment to be used primarily for generating Direct Current (DC) electricity.

338.5 Collector system.

This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities and devices (such as capacitors and reactors) that are used to transport and consolidate the power fed from individual solar panels up to, but not including, the substation prior to interconnection to the grid. This account shall exclude the cost of transformers and other equipment used for the express purpose of interconnecting to transmission or distribution lines.

Items

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
2. Armored conductors, buried, submarine, including insulators, insulating materials, splices in terminal chamber, potheads, etc.
3. Brackets.
4. Circuit breakers.
5. Conductors, including insulated and bare wires and cables.
6. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
7. Crossarms and braces.
8. Excavation and backfill, including shoring, bracing, bridging, and disposal of excess excavated material.
9. Extension arms.
10. Fireproofing, in connection with any items listed herein.
11. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
12. Ground wires, clamps, etc.

13. Guards.
14. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, etc.
15. Insulators, including pin, suspension, and other types, and tie wire or clamps.
16. Lightning arresters.
17. Paving, pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
18. Permits for construction.
19. Pole steps and ladders.
20. Poles, wood, steel, concrete, or other material.
21. Racks complete with insulators.
22. Railings.
23. Railroad and highway crossing guards.
24. Reinforcing and stubbing.
25. Removal and relocation of subsurface obstructions.
26. Settings.
27. Sewer connections, including drains, traps, tide valves, check valves, etc.
28. Shaving, painting, gaining, roofing, stenciling, and tagging.
29. Splices.
30. Sumps, including pumps.
31. Switches.
32. Towers.
33. Tree trimming, initial cost including the cost of permits therefor.
34. Ventilating equipment.
35. Other line devices.

338.6 Generator step-up transformers (GSU).

This account shall include only the cost of the GSU transformers directly connected to the generator terminal tips and other equipment used for conveying the power to the GSU for the purpose of initially changing the voltage or frequency of electric energy for the purpose of moving the power. It shall exclude the cost of additional transformers and other equipment once the power has been initially stepped up from a generator voltage to a higher voltage.

Note: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electricity for the purposes of transmission or distribution.

338.7 Inverters.

This account shall include the installed cost of inverters for the purpose of converting electricity from direct current (DC) to alternating current (AC).

338.8 Other accessory electrical equipment.

This account shall include the installed cost of other conversion or auxiliary generating apparatus and equipment used primarily in connection with the control and switching of electric energy produced by solar panels, including weather monitoring equipment, and protection of electric circuits and equipment, as used to support the generator in the action of generating power (excluding SCADA systems) not specifically chargeable to any other account. This account shall exclude Collector System costs, account 338.5, Collector System; GSU costs, account 338.6, Generator Step-up Transformers (GSU); and Inverter costs, account 338.7, Inverters.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.
2. Rheostats, backup storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, special housings, etc.
3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, special housing, etc.
4. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, trunktype boards complete, cubicles, generator signal stands, temperature-recording devices, atmospheric reading devices, frequency control equipment, master clocks, watt-hour meter, station totalizing wattmeter, backup storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, emergency backup batteries, special housing for batteries, etc.
5. Station buses, including main, auxiliary transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, current transformers, potential transformers, protective relays, backup storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station ground system, special fire-extinguishing system, and test equipment.

Note A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

Note B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

338.9 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

338.10 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

338.11 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.

5. Servers.
6. Workstations.
7. Telephones.

338.12 Miscellaneous power plant equipment.

This account shall include the installed cost of miscellaneous equipment in and about the solar plant devoted to general station use, and which is not properly includible in any of the foregoing solar power production accounts.

Items

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, piping, etc.
2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, hoists, etc., with electric and mechanical connections.
3. Fire-extinguishing equipment for general station use.
4. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
5. Miscellaneous equipment, including atmospheric and weather indicating devices, intrasite communication equipment, laboratory equipment, signal systems, callophones, emergency whistles and sirens, fire alarms, and other similar equipment.
6. Miscellaneous belts, pulleys, countershafts, etc.
7. Refrigerating system including compressors, pumps, cooling coils, etc.
8. Station maintenance equipment, including lathes, shapers, planers, drill presses, hydraulic presses, grinders, etc., with motors, shafting, hangers, pulleys, etc.
9. Ventilating equipment, including items wholly identified with apparatus listed herein.

Note: When any item of equipment, listed herein is used wholly in connection with equipment included in another account, its cost shall be included in such other account.

338.13 Asset retirement costs for solar production.

This account shall include asset retirement costs on plant included in solar production function.

338.20 Land and land rights.

This account shall include the cost of land and land rights used in connection with wind power generation. (See electric plant instruction 7.)

338.21 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with wind power generation. (See electric plant instruction 8.)

338.22 [Reserved]

338.23 Wind turbines.

This account shall include the cost installed of the mechanical turbine parts and generator equipment, including nacelle, gearbox, etc., to be used primarily for generating electricity.

338.24 Wind towers and fixtures.

This account shall include the cost installed of towers and appurtenant fixtures used for supporting wind power production. Foundations shall be included in account 338.21 Structures and Improvements.

338.25 [Reserved]

338.26 Collector system.

This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities and devices (such as capacitors and reactors) that are used to transport and consolidate the power fed from individual wind turbines up to, but not including, the substation prior to interconnection to the grid. This account shall exclude the cost of transformers and other equipment used for the express purpose of interconnecting to transmission or distribution lines.

Items

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
2. Armored conductors, buried, submarine, including insulators, insulating materials, splices in terminal chamber, potheads, etc.
3. Brackets.
4. Circuit breakers.
5. Conductors, including insulated and bare wires and cables.
6. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
7. Crossarms and braces.
8. Excavation and backfill, including shoring, bracing, bridging, and disposal of excess excavated material.
9. Extension arms.
10. Fireproofing, in connection with any items listed herein.
11. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
12. Ground wires, clamps, etc.
13. Guards.
14. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, etc.
15. Insulators, including pin, suspension, and other types, and tie wire or clamps.
16. Lightning arresters.
17. Paving, pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
18. Permits for construction.
19. Pole steps and ladders.
20. Poles, wood, steel, concrete, or other material.
21. Racks complete with insulators.
22. Railings.
23. Railroad and highway crossing guards.
24. Reinforcing and stubbing.
25. Removal and relocation of subsurface obstructions.
26. Settings.
27. Sewer connections, including drains, traps, tide valves, check valves, etc.
28. Shaving, painting, gaining, roofing, stenciling, and tagging.
29. Splices.
30. Sumps, including pumps.
31. Switches.
32. Towers.
33. Tree trimming, initial cost including the cost of permits therefor.
34. Ventilating equipment.
35. Other line devices.

338.27 Generator step-up transformers (GSU).

This account shall include only the cost of the GSU transformers and other equipment used for conveying the power to the pad-mount GSU for the purpose of initially changing the voltage or frequency of electric energy for the purpose of moving the power. It shall exclude the cost of additional transformers and other equipment once the power has been initially stepped up from a generator voltage to a higher voltage.

Note: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electricity for the purposes of transmission or distribution.

338.28 Inverters.

This account shall include the installed cost of inverters for the purpose of converting electricity from direct current (DC) to alternating current (AC).

338.29 Other accessory electrical equipment.

This account shall include the installed cost of other conversion or auxiliary generating apparatus and equipment used primarily in connection with the control and switching of electric energy produced by wind

turbines, including weather monitoring equipment, and protection of electric circuits and equipment, as used to support the generator in the action of generating power (excluding SCADA systems) not specifically chargeable to any other account. This account shall exclude Collector System costs, account 338.26, Collector System; GSU costs, account 338.27, Generator Step-up Transformers (GSU); and Inverter costs, account 338.28, Inverters.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.
2. Rheostats, backup storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, special housings, etc.
3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, special housing, etc.
4. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, trunktype boards complete, cubicles, station supervisory control boards, generator signal stands, temperature-recording devices, atmospheric reading devices, frequency control equipment, master clocks, watt-hour meter, station totalizing wattmeter, backup storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, emergency backup batteries, special housing for batteries, etc.
5. Station buses, including main, auxiliary transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, current transformers, potential transformers, protective relays, backup storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station ground system, special fire-extinguishing system, and test equipment.

Note A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

Note B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

338.30 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

338.31 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

338.32 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

338.33 Miscellaneous power plant equipment.

This account shall include the installed cost of miscellaneous equipment in and about the wind plant devoted to general station use, and which is not properly includible in any of the foregoing wind power production accounts.

338.34 Asset retirement costs for wind production.

This account shall include asset retirement costs on plant included in wind production function.

339.1 Land and land rights.

This account shall include the cost of land and land rights used in connection with other renewable power generation. (See electric plant instruction 7.)

339.2 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with other renewable power generation. (See electric plant instruction 8.)

Note: this includes mirrors for solar boiler systems.

339.3 Fuel holders.

This account shall include the cost installed of renewable fuel handling and storage equipment used between the point of fuel delivery to the station and the intake through which fuel is either directly drawn to the engine, or into a boiler system, inclusive.

Items

1. Blower and fans.
2. Boilers and pumps.
3. Economizers.
4. Exhauster outfits.
5. Flues and piping.
6. Pipe system.
7. Producers.
8. Regenerators.
9. Scrubbers.
10. Steam injectors.
11. Tanks for storage of electrolytes, hydrogen, renewable natural gas, algae, etc.
12. Vaporizers.

339.4 Boilers.

This account shall include the cost installed of furnaces, boilers, steam and feed water piping, boiler apparatus and accessories used in the production of steam or other vapor, to be used primarily for generating electricity. This account includes solar boiler systems.

Items

1. Boiler feed system, including feed water heaters, evaporator condensers, heater drain pumps, heater drainers, deaerators, and vent condensers, boiler feed pumps, surge tanks, feed water regulators, feed water measuring equipment, and all associated drives.
2. Boiler plant cranes and hoists and associated drives.

3. Boilers and equipment, including boilers and baffles, economizers, superheaters, foundations and settings, water walls, arches, grates, insulation, blow-down system, drying out of new boilers, also associated motors or other power equipment.
4. Draft equipment, including air preheaters and accessories, induced and forced draft fans, air ducts, combustion control mechanisms, and associated motors or other power equipment.
5. Gas-burning equipment, including holders, burner equipment and piping, control equipment, etc.
6. Instruments and devices, including all measuring, indicating, and recording equipment for boiler plant service together with mountings and supports.
7. Lighting systems.
8. Stacks, including foundations and supports, stack steel and ladders, stack concrete, stack lining, stack painting (first), when set on separate foundations, independent of substructure or superstructure of building.
9. Station piping, including pipe, valves, fittings, separators, traps, desuperheaters, hangers, excavation, covering, etc., for station piping system, including all steam, condensate, boiler feed and water supply piping, etc.
10. Ventilating equipment.
11. Water purification equipment, including softeners and accessories, evaporators and accessories, heat exchangers, filters, tanks for filtered or softened water, pumps, motors, etc.
12. Water-supply systems, including pumps, motors, strainers, raw-water storage tanks, boiler wash pumps, intake and discharge pipes and tunnels not a part of a building.

339.5 [Reserved]

339.6 Generators.

This account shall include the cost installed of other renewable generators of all types apart from wind and solar.

Items

1. Cranes, hoists, etc., including items wholly identified with such apparatus.
2. Fire-extinguishing equipment.
3. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
4. Generator cooling system, including air cooling and washing apparatus, air fans and accessories, air ducts, etc.
5. Generators—main, a.c. or d.c., including field rheostats and connections for self-excited units and excitation system when identified with the generating unit.
6. Lighting systems.
7. Lubricating system, including tanks, filters, strainers, pumps, piping, coolers, etc.
8. Mechanical meters, and recording instruments.
9. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.
10. Cooling system, including towers, pumps, tank, and piping.
11. Piping—main exhaust, including connections between generator and condenser and between condenser and hotwell.
12. Piping—main steam, including connections from main throttle valve to turbine inlet.
13. Circulating pumps, including connections between condensers and intake and discharge tunnels.
14. Tunnels, intake and discharge, for condenser system, when not a part of structure, water screens, etc.
15. Water screens, motors, etc.
16. Moisture separator for turbine steam.
17. Turbine lubricating oil (initial charge).

339.7 [Reserved]

339.8 Other accessory electrical equipment.

This account shall include the installed cost of other conversion or auxiliary generating apparatus and equipment used primarily in connection with the control and switching of electric energy produced by other renewable, including weather monitoring equipment, and protection of electric circuits and equipment as used to support the generator in the action of generating power (excluding SCADA systems) not specifically chargeable to any other account.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.
2. Rheostats, backup storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, special housings, etc.
3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, special housing, etc.
4. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, trunktype boards complete, cubicles, station supervisory control boards, generator signal stands, temperature-recording devices, atmospheric reading devices, frequency control equipment, master clocks, watt-hour meter, station totalizing wattmeter, backup storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, emergency backup batteries, special housing for batteries, etc.
5. Station buses, including main, auxiliary transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, current transformers, potential transformers, protective relays, backup storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station ground system, special fire-extinguishing system, and test equipment.

Note A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

Note B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

339.9 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

339.10 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.

2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

339.11 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

339.12 Miscellaneous power plant equipment.

This account shall include the installed cost of miscellaneous equipment in and about the other renewable plant devoted to general station use, and which is not properly includible in any of the foregoing other renewable power production accounts.

339.13 Asset retirement costs for other renewable production.

This account shall include asset retirement costs on plant included in other renewable production function.

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345.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

345.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

345.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

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348 [Reserved]

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351 [Reserved]

351.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

351.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

351.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

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363 [Reserved]

363.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

363.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

363.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.

2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

387 [Reserved]

387.1 Land and land rights.

This account shall include the cost of land and land rights used in connection with energy storage plant. (See electric plant instruction 7.)

387.2 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with energy storage plant. (See electric plant instruction 8.)

387.3 Energy storage equipment.

A. This account shall include the cost installed of energy storage equipment used to store energy for load managing purposes.

B. Labor costs and power purchased to energize the equipment are includible on the first installation only. The cost of removing, relocating and resetting energy storage equipment shall not be charged to this account but to operations and maintenance expense accounts for energy storage expenses, as appropriate.

Items

1. Batteries/Chemical.
2. Compressed Air.
3. Flywheels.
4. Superconducting Magnetic Storage.
5. Thermal.

Note: The cost of pumped storage hydroelectric plant shall be charged to hydraulic production plant. These are examples of items includible in this account. This list is not exhaustive.

387.4 [Reserved]

387.5 Collector system.

This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities and devices (such as capacitors and reactors) that are used to transport and consolidate the power fed from individual storage facilities up to, but not including, the substation prior to interconnection to the grid. This account shall exclude the cost of transformers and other equipment used for the express purpose of interconnecting to transmission or distribution lines.

Items

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
2. Armored conductors, buried, submarine, including insulators, insulating materials, splices in terminal chamber, potheads, etc.
3. Brackets.
4. Circuit breakers.
5. Conductors, including insulated and bare wires and cables.
6. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
7. Crossarms and braces.
8. Excavation and backfill, including shoring, bracing, bridging, and disposal of excess excavated material.
9. Extension arms.
10. Fireproofing, in connection with any items listed herein.
11. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
12. Ground wires, clamps, etc.
13. Guards.
14. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, etc.
15. Insulators, including pin, suspension, and other types, and tie wire or clamps.
16. Lightning arresters.
17. Paving, pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
18. Permits for construction.
19. Pole steps and ladders.
20. Poles, wood, steel, concrete, or other material.
21. Racks complete with insulators.
22. Railings.
23. Railroad and highway crossing guards.
24. Reinforcing and stubbing.
25. Removal and relocation of subsurface obstructions.
26. Settings.
27. Sewer connections, including drains, traps, tide valves, check valves, etc.
28. Shaving, painting, gaining, roofing, stenciling, and tagging.
29. Splices.
30. Sumps, including pumps.
31. Switches.
32. Towers.
33. Tree trimming, initial cost including the cost of permits therefor.
34. Ventilating equipment.
35. Other line devices.

387.6 Generator step-up transformers (GSU).

This account shall include only the cost of the GSU transformers and other equipment used for conveying the power to the pad-mount GSU for the purpose of initially changing the voltage or frequency of electric energy for the purpose of moving the power. It shall exclude the cost of additional transformers and other equipment once the power has been initially stepped up from a generator voltage to a higher voltage.

Note: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electricity for the purposes of transmission or distribution.

387.7 Inverters.

This account shall include the installed cost of inverters for the purpose of converting electricity from direct current (DC) to alternating current (AC).

387.8 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

387.9 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

387.10 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.

4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

387.11 Miscellaneous energy storage equipment.

This account shall include the installed cost of miscellaneous equipment in and about the energy storage equipment devoted to general station use, and which is not properly includible in any of the foregoing energy storage plant accounts.

387.12 Asset retirement costs for energy storage plant.

This account shall include asset retirement costs on plant included in the energy storage plant function.

* * * * *

397 [Reserved]

397.1 Computer hardware.This account shall include the cost of computer hardware and miscellaneous information technology equipment.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

397.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

397.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

■ 8. Under Income Chart of Accounts, section 1, ''Utility Operating Income'', add accounts 411.11 and 411.12 to read as follows;

Income Chart of Accounts

1. Utility Operating Income

* * * * *

411.11 Gains from disposition of environmental credits.
411.12 Losses from disposition of environmental credits.

* * * * *

■ 9. Under ''Income Accounts'', add accounts 411.11 and 411.12 to read as follows;

Income Accounts

* * * * *

411.11 Gains from disposition of environmental credits.

This account shall be credited with the gain on the sale, exchange, or other disposition of environmental credits in accordance with paragraph (I) of General Instruction No. 21. Income taxes relating to gains recorded in this account shall be recorded in account 409.1, Income Taxes, Utility Operating Income.

Note: Revenues for environmental credits associated with the sale of energy shall be recorded in the appropriate operating revenue account consistent with General Instruction No. 21 (J).

411.12 Losses from disposition of environmental credits.

This account shall be debited with the loss on the sale, exchange, or other disposition of environmental credits in accordance with paragraph (I) of General Instruction No. 21. Income taxes relating to losses recorded in this account shall be recorded in account 409.1, Income Taxes, Utility Operating Income.

* * * * *

■ 10. In the list of accounts under ''Operation and Maintenance Expense Chart of Accounts'':
■ i. Under section 1.a, under ''Maintenance'', add accounts 513.1, 513.2, and 513.3;
■ ii. Under section 1.b, under ''Maintenance'', add accounts 531.1, 531.2, and 531.3;
■ iii. Under section 1.c, under ''Maintenance'', add accounts 544.1, 544.2, and 544.3;
■ iv. Under section 1.d, under ''Operation'', remove and reserve account 548.1;
■ v. Under section 1.d, under ''Maintenance'', revise account 553.1, and add accounts 553.2, and 553.3
■ vi. Under section 1.e, add accounts 555.2, and 555.3;
■ vii. Add sections 1.f, ''solar generation'', 1.g ''wind generation'', and 1.h, ''other renewable generation'';
■ viii. Under section 2, under subtitle ''Operation'' remove and reserve account 562.1;
■ ix. Under section 2, under subtitle ''Maintenance'', revise accounts 569.1, 569.2, and 569.3, and remove and reserve account 570.1;
■ x. Redesignate sections 4 ''Distribution Expenses'' through 8 ''Administrative and General Expenses'', as sections 5 through 9;
■ xi. Add a new section 4, ''Energy Storage Expenses'';
■ xii. Under newly redesignated section 5, ''Distribution Expenses'', remove and reserve account 584.1, revise account 592.2, and add accounts 592.3, and 592.4; and
■ xiii. Under newly redesignated section 9, ''Administrative and General Expenses'', add accounts 935.1, 935.2, and 935.3;

The revisions and additions read as follows:

Operation and Maintenance Expense Chart of Accounts

1. Power Production Expenses
a. steam power generation

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Maintenance

* * * * *

513.1 Maintenance of computer hardware (Major only).
513.2 Maintenance of computer software (Major only).
513.3 Maintenance of communication equipment (Major only).

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b. nuclear power generation

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Maintenance

* * * * *

531.1 Maintenance of computer hardware (Major only).
531.2 Maintenance of computer software (Major only).
531.3 Maintenance of communication equipment (Major only).

* * * * *

c. hydraulic power generation

* * * * *

Maintenance

* * * * *

544.1 Maintenance of computer hardware (Major only).
544.2 Maintenance of computer software (Major only).

544.3 Maintenance of communication equipment (Major only).

* * * * *

d. other power generation

* * * * *

Operation

* * * * *

548.1 [Reserved]

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Maintenance

* * * * *

553.1 Maintenance of computer hardware (Major only).

553.2 Maintenance of computer software (Major only).

553.3 Maintenance of communication equipment (Major only).

* * * * *

e. other power supply expenses

555.2 Bundled environmental credits.

555.3 Unbundled environmental credits.

* * * * *

f. solar generation

Operation

558.1 Operation supervision and engineering.

558.2 Solar panel generation and other plant operating expenses (Major only).

558.3 [Reserved]

558.4 Rents.

558.5 Operation supplies and expenses (Nonmajor only).

Maintenance

558.6 Maintenance supervision and engineering (Major only).

558.7 Maintenance of solar panels, structures, and equipment (Major only).

558.8 Maintenance of computer hardware (Major only).

558.9 Maintenance of computer software (Major only).

558.10 Maintenance of communication equipment (Major only).

558.11 Maintenance of miscellaneous solar generation plant (Major only).

558.12 Maintenance of solar generation plant (Nonmajor only).

g. wind generation

Operation

558.13 Operation supervision and engineering.

558.14 Wind turbine generation and other plant operating expenses (Major only).

558.15 [Reserved]

558.16 Rents.

558.17 Operation supplies and expenses (Nonmajor only).

Maintenance

558.18 Maintenance supervision and engineering (Major only).

558.19 Maintenance of wind turbines, structures, and equipment (Major only).

558.20 Maintenance of computer hardware (Major only).

558.21 Maintenance of computer software (Major only).

558.22 Maintenance of communication equipment (Major only).

558.23 Maintenance of miscellaneous wind generation plant (Major only).

558.24 Maintenance of wind generation plant (Nonmajor only).

h. other renewable generation

Operation

559.1 Operation supervision and engineering.

559.2 Other miscellaneous generation and other plant operating expenses (Major only).

559.3 Fuel.

559.4 Rents.

559.5 Operation supplies and expenses (Nonmajor only).

Maintenance

559.6 Maintenance supervision and engineering (Major only).

559.7 Maintenance of structures (Major only).

559.8 [Reserved]

559.9 Maintenance of boilers (Major only).

559.10 Maintenance of generating and electric equipment (Major only).

559.11 [Reserved]

559.12 Maintenance of computer hardware (Major only).

559.13 Maintenance of computer software (Major only).

559.14 Maintenance of communication equipment (Major only).

559.15 Maintenance of miscellaneous other renewable generation plant (Major only).

559.16 Maintenance of other renewable generation plant (Nonmajor only).

2. Transmission Expenses

Operation

* * * * *

562.1 [Reserved]

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Maintenance

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569.1 Maintenance of computer hardware (Major only).

569.2 Maintenance of computer software (Major only).

569.3 Maintenance of communication equipment (Major only).

* * * * *

570.1 [Reserved]

* * * * *

4. Energy Storage Expenses

Operation

577.1 Operation supervision and engineering.

577.2 Operation of energy storage equipment (Major only).

577.3 Storage fuel.

577.4 Rents.

577.5 Operation supplies and expenses (Nonmajor only).

Maintenance

578.1 Maintenance supervision and engineering (Major only).

578.2 Maintenance of energy storage equipment and structures (Major only).

578.3 Maintenance of computer hardware (Major only).

578.4 Maintenance of computer software (Major only).

578.5 Maintenance of communication equipment (Major only).

578.6 Maintenance of miscellaneous other energy storage plant (Major only).

578.7 Maintenance of other energy storage plant (Nonmajor only).

5. Distribution Expenses

Operation

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584.1 [Reserved]

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Maintenance

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592.2 Maintenance of computer hardware (Major only).

592.3 Maintenance of computer software (Major only).

592.4 Maintenance of communication equipment (Major only).

* * * * *

9. Administrative and General Expenses

* * * * *

Maintenance

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935.1 Maintenance of computer hardware (Major only).

935.2 Maintenance of computer software (Major only).

935.3 Maintenance of communication equipment (Major only).

* * * * *

■ 11. Under Operation and Maintenance Expense Accounts:

■ i. Revise account 509;

■ ii. Add accounts 513.1, 513.2, 513.3, 531.1, 531.2, 531.3, 544.1, 544.2, and 544.3;

■ iii. Remove and reserve account 548.1;

■ iv. Revise account 553.1;

■ v. Add accounts 553.2, 553.3, 555.2, 555.3, 558.1 through 558.24, and 559.1 through 559.16;

■ vi. Remove and reserve account 562.1;

■ vii. Revise accounts 569.1, 569.2, and 569.3;

■ viii. Remove and reserve account 570.1;

■ ix. Add accounts 577.1, 577.2 through 577.5, and 578.1 through 578.7;

■ x. Remove and reserve account 584.1; and

■ xi. Add account 592.2, 592.3, 592.4, 935.1, 935.2, and 935.3.

The revisions and additions read as follows:

Operation and Maintenance Expense Accounts

* * * * *

509 Allowances.

This account shall include the cost of allowances expensed concurrent with the monthly emissions. (See General Instruction No. 21.)

513.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the steam power generation subfunction. (See operating expense instruction 2.)

513.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the steam power generation subfunction. (See operating expense instruction 2.)

513.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the steam power generation subfunction. (See operating expense instruction 2.)

* * * * *

531.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the nuclear power generation subfunction. (See operating expense instruction 2.)

531.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the nuclear power generation subfunction. (See operating expense instruction 2.)

531.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the nuclear power generation subfunction. (See operating expense instruction 2.)

* * * * *

544.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the hydraulic power generation subfunction. (See operating expense instruction 2.)

544.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the hydraulic power generation subfunction. (See operating expense instruction 2.)

544.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the hydraulic power generation subfunction. (See operating expense instruction 2.)

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548.1 [Reserved]

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553.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the other power generation subfunction. (See operating expense instruction 2.)

553.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the other power generation subfunction. (See operating expense instruction 2.)

553.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the other power generation subfunction. (See operating expense instruction 2.)

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555.2 Bundled environmental credits.

For environmental credits that were bundled with energy, this account shall include the cost of environmental credits expensed concurrent with the monthly usage. (See General Instruction No. 21.)

555.3 Unbundled environmental credits.

For environmental credits that were unbundled from energy, this account shall include the cost of environmental credits expensed concurrent with the monthly usage. (See General Instruction No. 21.)

* * * * *

558.1 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of solar power generating stations. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of solar power generating stations.

Labor

1. Supervising solar production.
2. Operating solar panels, auxiliary apparatus and switching and other electric equipment.
3. Operating switchboards, switch gear and electric control and protective equipment.
4. Keeping electric plant log and records and preparing reports on electric plant operations.
5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
6. Cleaning electric plant equipment when not incidental to maintenance work.

558.2 Solar panel generation and other plant operating expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating solar generation and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other solar generation operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.
2. Operating solar generators and auxiliary apparatus and switching and other electric equipment.
3. Keeping electric plant log and records and preparing reports on electric plant operations.
4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
5. Cleaning electric plant equipment when not incidental to maintenance work.
6. General clerical work.
7. Guarding and patrolling plant and yard.
8. Building service.
9. Care of grounds including snow removal, cutting grass, etc.
10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.
12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
13. First-aid supplies and safety equipment.
14. Employees' service facilities expenses.
15. Building service supplies.
16. Communication service.
17. Miscellaneous office supplies and expenses, printing and stationery.
18. Transportation expenses.
19. Meals, traveling and incidental expenses.
20. Water for fire protection or general use.
21. Research, development, and demonstration expenses.

558.3 [Reserved]

558.4 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with solar power generation. (See operating expense instruction 3.)

558.5 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of solar power generating stations.

Items

1. Lubricants and control system oils.
2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.
3. First-aid supplies and safety equipment.
4. Employees' service facilities expenses.
5. Building service supplies.
6. Communication service.
7. Miscellaneous office supplies and expenses, printing and stationery.
8. Transportation expenses.
9. Meals, traveling and incidental expenses.
10. Water for fire protection or general use.

558.6 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of solar generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

558.7 Maintenance of solar panels, structures, and equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of solar structures, solar panels, and other solar plant equipment, the book cost of which is includible in account 338.2, Structures and Improvements, account 338.4, Solar Panels, account 338.5, Collector System, account 338.6, Generator Step-up Transformers (GSU), account 338.7, Inverters, and account 338.8, Other Accessory Electrical Equipment. (See operating expense instruction 2.)

558.8 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the solar generation subfunction. (See operating expense instruction 2.)

558.9 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the solar generation subfunction. (See operating expense instruction 2.)

558.10 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the solar generation subfunction. (See operating expense instruction 2.)

558.11 Maintenance of miscellaneous solar generation plant (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous solar generation plant, the book cost of which is includible in account 338.12, Miscellaneous Power Plant Equipment. (See operating expense instruction 2.)

558.12 Maintenance of solar generation plant (Nonmajor only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of solar generation plant the book cost of which is includible in plant accounts 338.2 to 338.12, inclusive. (See operating expense instruction 2.)

558.13 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of wind power generating stations. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of wind power generating stations.

Labor

1. Supervising wind production.
2. Operating wind turbines, generators and auxiliary apparatus and switching and other electric equipment.
3. Operating switchboards, switch gear and electric control and protective equipment.
4. Keeping electric plant log and records and preparing reports on electric plant operations.
5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
6. Cleaning electric plant equipment when not incidental to maintenance work.

558.14 Wind turbine generation and other plant operating expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating wind generation and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other wind generation operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.
2. Operating wind turbines, generators and auxiliary apparatus and switching and other electric equipment.
3. Keeping electric plant log and records and preparing reports on electric plant operations.
4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
5. Cleaning electric plant equipment when not incidental to maintenance work.
6. General clerical work.
7. Guarding and patrolling plant and site.
8. Building service.
9. Care of grounds including snow removal, cutting grass, etc.
10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.

12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
13. First-aid supplies and safety equipment.
14. Employees' service facilities expenses.
15. Building service supplies.
16. Communication service.
17. Miscellaneous office supplies and expenses, printing and stationery.
18. Transportation expenses.
19. Meals, traveling and incidental expenses.
20. Water for fire protection or general use.
21. Research, development, and demonstration expenses.

558.15 [Reserved]

558.16 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with wind power generation. (See operating expense instruction 3.)

558.17 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of wind power generating stations.

Items

1. Lubricants and control system oils.
2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.
3. First-aid supplies and safety equipment.
4. Employees' service facilities expenses.
5. Building service supplies.
6. Communication service.
7. Miscellaneous office supplies and expenses, printing and stationery.
8. Transportation expenses.
9. Meals, traveling and incidental expenses.
10. Water for fire protection or general use.

558.18 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of wind generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

558.19 Maintenance of wind turbines, structures, and equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of wind structures, the book cost of which is includible in account 338.21, Structures and Improvements, account 338.23, Wind Turbines, account 338.24, Wind Towers and Fixtures, account 338.26, Collector System, account 338.27, Generator Step-up Transformers (GSU), account 338.28, Inverters, and account 338.29, Other Accessory Electrical Equipment. (See operating expense instruction 2.)

558.20 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the wind generation subfunction. (See operating expense instruction 2.)

558.21 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the wind generation subfunction. (See operating expense instruction 2.)

558.22 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the wind generation subfunction. (See operating expense instruction 2.)

558.23 Maintenance of miscellaneous wind generation plant (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous wind generation plant, the book cost of which is includible in account 338.33, Miscellaneous Power Plant Equipment. (See operating expense instruction 2.)

558.24 Maintenance of wind generation plant (Nonmajor only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of wind generation plant the book cost of which is includible in plant accounts 338.21 to 338.33, inclusive. (See operating expense instruction 2.)

559.1 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of other renewable power generating stations. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of other renewable power generating stations.

Labor

1. Supervising other renewable production.
2. Operating other renewable prime movers, generators and auxiliary apparatus and switching and other electric equipment.
3. Operating switchboards, switch gear and electric control and protective equipment.
4. Keeping electric plant log and records and preparing reports on electric plant operations.
5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
6. Cleaning electric plant equipment when not incidental to maintenance work.

559.2 Other miscellaneous generation and other plant operating expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating other renewable generation and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other renewable generation operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.
2. Operating other renewable prime movers, generators and auxiliary apparatus and switching and other electric equipment.
3. Keeping electric plant log and records and preparing reports on electric plant operations.
4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
5. Cleaning electric plant equipment when not incidental to maintenance work.
6. General clerical work.
7. Guarding and patrolling plant and yard.
8. Building service.
9. Care of grounds including snow removal, cutting grass, etc.

10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.
12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
13. First-aid supplies and safety equipment.
14. Employees' service facilities expenses.
15. Building service supplies.
16. Communication service.
17. Miscellaneous office supplies and expenses, printing and stationery.
18. Transportation expenses.
19. Meals, traveling and incidental expenses.
20. Water for fire protection or general use.
21. Research, development, and demonstration expenses.

559.3 Fuel.

This account shall include the cost delivered at the station (see account 151, Fuel Stock, for Major utilities, and account 154, Plant Materials and Operating Supplies, for Nonmajor utilities) of all fuel, such as electrolytes, hydrogen, renewable natural gas, algae, etc., used in other power generation.

559.4 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with other renewable power generation. (See operating expense instruction 3.)

559.5 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of other renewable power generating stations.

Items

1. Lubricants and control system oils.
2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.
3. First-aid supplies and safety equipment.
4. Employees' service facilities expenses.
5. Building service supplies.
6. Communication service.
7. Miscellaneous office supplies and expenses, printing and stationery.
8. Transportation expenses.
9. Meals, traveling and incidental expenses.
10. Water for fire protection or general use.

559.6 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of other renewable power generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

559.7 Maintenance of structures (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of other renewable structures, the book cost of which is includible in account 339.2, Structures and Improvements, and account 339.3 Fuel Holders. (See operating expense instruction 2.)

559.8 [Reserved]

559.9 Maintenance of boilers (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of other renewable plant, the book cost of which is includible in account 339.4, Boilers. (See operating expense instruction 2.)

559.10 Maintenance of generating and electric equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant, the book cost of which is includible in account 339.6. Generators, and account 339.8, Other Accessory Electrical Equipment. (See operating expense instruction 2.)

559.11 [Reserved]

559.12 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the other renewable generation subfunction. (See operating expense instruction 2.)

559.13 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the other renewable generation subfunction. (See operating expense instruction 2.)

559.14 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the other renewable generation subfunction. (See operating expense instruction 2.)

559.15 Maintenance of miscellaneous other renewable generation plant (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous other renewable generation plant, the book cost of which is includible in account 339.12, Miscellaneous Power Plant Equipment. (See operating expense instruction 2.)

559.16 Maintenance of other renewable generation plant (Nonmajor only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of other renewable generation plant the book cost of which is includible in plant accounts 339.2 to 339.12, inclusive. (See operating expense instruction 2.)

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562.1 [Reserved]

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569.1 Maintenance of computer hardware (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the transmission function. (See operating expense instruction 2.)

569.2 Maintenance of computer software. (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the transmission function. (See operating expense instruction 2.)

Items

1. Telephone support.
2. Onsite support.
3. Software updates and minor revisions.

569.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the transmission function. (See operating expense instruction 2.)

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570.1 [Reserved]

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577.1 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of energy storage plant. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of energy storage equipment.

Labor

1. Supervising energy storage equipment operation.
2. Operating energy storage equipment and auxiliary apparatus and switching and other electric equipment.
3. Operating switchboards, switch gear and electric control and protective equipment.
4. Keeping electric plant log and records and preparing reports on electric plant operations.
5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
6. Cleaning electric plant equipment when not incidental to maintenance work.

577.2 Operation of energy storage equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating energy storage plant and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other energy storage operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.
2. Operating energy storage and auxiliary apparatus and switching and other electric equipment.
3. Keeping electric plant log and records and preparing reports on electric plant operations.
4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
5. Cleaning electric plant equipment when not incidental to maintenance work.
6. General clerical work.
7. Guarding and patrolling plant and yard.
8. Building service.
9. Care of grounds including snow removal, cutting grass, etc.
10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.
12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
13. First-aid supplies and safety equipment.
14. Employees' service facilities expenses.
15. Building service supplies.
16. Communication service.
17. Miscellaneous office supplies and expenses, printing and stationery.
18. Transportation expenses.
19. Meals, traveling and incidental expenses.
20. Water for fire protection or general use.
21. Research, development, and demonstration expenses.

577.3 Storage fuel.

This account shall include the cost delivered at the station (see account 151, Fuel Stock, for Major utilities, and account 154, Plant Materials and Operating Supplies, for Nonmajor utilities) of all fuel, such as electrolytes, hydrogen, renewable natural gas, algae, etc., used in energy storage.

577.4 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with energy storage. (See operating expense instruction 3.)

577.5 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of energy storage equipment.

Items

1. Lubricants and control system oils.
2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.
3. First-aid supplies and safety equipment.
4. Employees' service facilities expenses.
5. Building service supplies.
6. Communication service.
7. Miscellaneous office supplies and expenses, printing and stationery.
8. Transportation expenses.
9. Meals, traveling and incidental expenses.
10. Water for fire protection or general use.

578.1 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of energy storage facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

578.2 Maintenance of energy storage equipment and structures (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of energy storage structures, energy storage equipment, and other energy storage plant the book cost of which is includible in account 387.2, Structures and Improvements, account 387.3, Energy Storage Equipment, account 387.5, Collector System, account 387.6, Generator Step-up Transformers (GSU), and account 387.7, Inverters. (See operating expense instruction 2.)

578.3 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the energy storage function. (See operating expense instruction 2.)

578.4 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the energy storage function. (See operating expense instruction 2.)

578.5 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the energy storage function. (See operating expense instruction 2.)

578.6 Maintenance of miscellaneous other energy storage plant (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous energy storage plant, the book cost of which is includible in account 387.11, Miscellaneous Energy Storage Equipment. (See operating expense instruction 2.)

578.7 Maintenance of other energy storage plant (Nonmajor only).

This account shall include the cost of labor, materials used and expenses

incurred in the maintenance of energy storage plant the book cost of which is includible in plant accounts 387.2 to 387.11, inclusive. (See operating expense instruction 2.)

584.1 [Reserved]

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592.2 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the distribution function.

592.3 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the distribution function. (See operating expense instruction 2.)

592.4 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the distribution function. (See operating expense instruction 2.)

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935.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware used for administrative and general purposes. (See operating expense instruction 2.)

935.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products used for administrative and general purposes. (See operating expense instruction 2.)

935.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment used for administrative and general purposes. (See operating expense instruction 2.)

Note: The following Appendix will not be published in the Code of Federal Regulations.

X. Appendix A: New and Amended Form 1/1F/3–Q (Electric)

(The form changes were done considering a PDF format but would ultimately be configured for XBRL presentation. The following forms schedules represent an option for implementation and do not necessarily represent how the schedule will appear once designed, developed, and deployed.)

Note: Deletions are in brackets and Additions are in italics.

As indicated in the labels at the bottom of each schedule, the first schedules show changes to the pages of FERC Form No. 1 as well as pages that are the same in FERC Form Nos. 1–F and 3–Q (stating where page numbers differ), followed by schedules that have changes that only affect FERC Form No. 1–F, and lastly schedule changes to FERC Form No. 60.

BILLING CODE 6717–01–P

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of

LIST OF SCHEDULES (Electric Utility)

Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Line No.	Title of Schedule (a)	Reference Page No.(b)	Remarks (c)
1	General Information		
2	Control Over Respondent		
3	Corporations Controlled by Respondent		
4	Officers		
5	Directors		
6	Information on Formula Rates		
7	Important Changes During the Year		
8	Comparative Balance Sheet		
9	Statement of Income for the Year		
10	Statement of Retained Earnings for the Year		
11	Statement of Cash Flows		
12	Notes to Financial Statements		
13	Statement of Accum Comp Income, Comp Income, and Hedging Activities		
14	Summary of Utility Plant & Accumulated Provisions for Dep, Amort & Dep		
15	Nuclear Fuel Materials		
16	Electric Plant in Service		
17	Electric Plant Leased to Others		
18	Electric Plant Held for Future Use		
19	Construction Work in Progress-Electric		
20	Accumulated Provision for Depreciation of Electric Utility Plant		
21	Investment of Subsidiary Companies		
22	Materials and Supplies		
23	Allowances *and Environmental Credits*		
24	Extraordinary Property Losses		
25	Unrecovered Plant and Regulatory Study Costs		
26	Transmission Service and Generation Interconnection Study Costs		
27	Other Regulatory Assets		
28	Miscellaneous Deferred Debits		
29	Accumulated Deferred Income Taxes		
30	Capital Stock		
31	Other Paid-in Capital		
32	Capital Stock Expense		
33	Long-Term Debt		
34	Reconciliation of Reported Net Income with Taxable Inc for Fed Inc Tax		
35	Taxes Accrued, Prepaid and Charged During the Year		

36	Accumulated Deferred Investment Tax Credits			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of

LIST OF SCHEDULES (Electric Utility) (continued)

Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Line No.	Title of Schedule (a)	Reference Page No.(b)	Remarks (c)
37	Other Deferred Credits		
38	Accumulated Deferred Income Taxes-Accelerated Amortization Property		
39	Accumulated Deferred Income Taxes-Other Property		
40	Accumulated Deferred Income Taxes-Other		
41	Other Regulatory Liabilities		
42	Electric Operating Revenues		
43	Regional Transmission Service Revenues (Account 457.1)		
44	Sales of Electricity by Rate Schedules		
45	Sales for Resale		
46	Electric Operation and Maintenance Expenses		
47	Purchased Power		
48	Transmission of Electricity for Others		
49	Transmission of Electricity by ISO/RTOs		
50	Transmission of Electricity by Others		
51	Miscellaneous General Expenses-Electric		
52	Depreciation and Amortization of Electric Plant		
53	Regulatory Commission Expenses		
54	Research, Development and Demonstration Activities		
55	Distribution of Salaries and Wages		
56	Common Utility Plant and Expenses		
57	Amounts included in ISO/RTO Settlement Statements		
58	Purchase and Sale of Ancillary Services		
59	Monthly Transmission System Peak Load		
60	Monthly ISO/RTO Transmission System Peak Load		
61	Electric Energy Account		
62	Monthly Peaks and Output		
63	Steam Electric Generating Plant Statistics		
63.1	*Renewable Generating Plant Statistics*		
64	Hydroelectric Generating Plant Statistics		
65	Pumped Storage Generating Plant Statistics		
66	Generating Plant Statistics Pages		
66.1	Energy Storage Operations (Large Plants)		
66.2	Energy Storage Operations (Small Plants)		

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of

LIST OF SCHEDULES (Electric Utility) (continued)

Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Line No.	Title of Schedule (a)	Reference Page No.(b)	Remarks (c)
67	Transmission Line Statistics Pages		
68	Transmission Lines Added During the Year		
69	Substations		
70	Transactions with Associated (Affiliated) Companies		
71	Footnote Data		
	Stockholders' Reports Check appropriate box: Two copies will be submitted No annual report to stockholders is prepared		

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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year/Period of Report End of _____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
1	**UTILITY PLANT**			
2	Utility Plant (101-106, 114)	200-201		
3	Construction Work in Progress (107)	200-201		
4	TOTAL Utility Plant (Enter Total of lines 2 and 3)			
5	(Less) Accum. Prov. for Depr. Amort. Depl. (108, 110, 111, 115)	200-201		
6	Net Utility Plant (Enter Total of line 4 less 5)			
7	Nuclear Fuel in Process of Ref., Conv.,Enrich., and Fab. (120.1)	202-203		
8	Nuclear Fuel Materials and Assemblies-Stock Account (120.2)			
9	Nuclear Fuel Assemblies in Reactor (120.3)			
10	Spent Nuclear Fuel (120.4)			
11	Nuclear Fuel Under Capital Leases (120.6)			
12	(Less) Accum. Prov. for Amort. of Nucl. Fuel Assemblies (120.5)	202-203		
13	Net Nuclear Fuel (Enter Total of lines 7-11 less 12)			
14	Net Utility Plant (Enter Total of lines 6 and 13)			
15	Utility Plant Adjustments (116)			
16	Gas Stored Underground - Noncurrent (117)			
17	**OTHER PROPERTY AND INVESTMENTS**			
18	Nonutility Property (121)			
19	(Less) Accum. Prov. for Depr. and Amort. (122)			

20	Investments in Associated Companies (123)			
21	Investment in Subsidiary Companies (123.1)	224-225		
22	(For Cost of Account 123.1, See Footnote Page 224, line 42)			
23	Noncurrent Portion of Allowances *and Environmental Credits*	228-229		
24	Other Investments (124)			
25	Sinking Funds (125)			
26	Depreciation Fund (126)			
27	Amortization Fund - Federal (127)			
28	Other Special Funds (128)			
29	Special Funds (Non Major Only) (129)			
30	Long-Term Portion of Derivative Assets (175)			
31	Long-Term Portion of Derivative Assets – Hedges (176)			
32	TOTAL Other Property and Investments (Lines 18-21 and 23-31)			
33	**CURRENT AND ACCRUED ASSETS**			
34	Cash and Working Funds (Non-major Only) (130)			
35	Cash (131)			
36	Special Deposits (132-134)			
37	Working Fund (135)			
38	Temporary Cash Investments (136)			
39	Notes Receivable (141)			
40	Customer Accounts Receivable (142)			
41	Other Accounts Receivable (143)			
42	(Less) Accum. Prov. for Uncollectible Acct.-Credit (144)			
43	Notes Receivable from Associated Companies (145)			
44	Accounts Receivable from Assoc. Companies (146)			
45	Fuel Stock (151)	227		
46	Fuel Stock Expenses Undistributed (152)	227		
47	Residuals (Elec) and Extracted Products (153)	227		
48	Plant Materials and Operating Supplies (154)	227		
49	Merchandise (155)	227		
50	Other Materials and Supplies (156)	227		
51	Nuclear Materials Held for Sale (157)	202-203/227		
52	Allowances *and Environmental Credits* (158.1, [and] 158.2, *158.3, and 158.4*)	228-229		

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year/Period of Report End of _____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)(Continued)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
53	(Less) Noncurrent Portion of Allowances *and Environmental Credits*			
54	Stores Expense Undistributed (163)	227		
55	Gas Stored Underground - Current (164.1)			
56	Liquefied Natural Gas Stored and Held for Processing (164.2-164.3)			
57	Prepayments (165)			
58	Advances for Gas (166-167)			
59	Interest and Dividends Receivable (171)			
60	Rents Receivable (172)			
61	Accrued Utility Revenues (173)			
62	Miscellaneous Current and Accrued Assets (174)			

63	Derivative Instrument Assets (175)			
64	(Less) Long-Term Portion of Derivative Instrument Assets (175)			
65	Derivative Instrument Assets - Hedges (176)			
66	(Less) Long-Term Portion of Derivative Instrument Assets - Hedges (176			
67	Total Current and Accrued Assets (Lines 34 through 66)			
68	**DEFERRED DEBITS**			
69	Unamortized Debt Expenses (181)			
70	Extraordinary Property Losses (182.1)	230a		
71	Unrecovered Plant and Regulatory Study Costs (182.2)	230b		
72	Other Regulatory Assets (182.3)	232		
73	Prelim. Survey and Investigation Charges (Electric) (183)			
74	Preliminary Natural Gas Survey and Investigation Charges 183.1)			
75	Other Preliminary Survey and Investigation Charges (183.2)			
76	Clearing Accounts (184)			
77	Temporary Facilities (185)			
78	Miscellaneous Deferred Debits (186)	233		
79	Def. Losses from Disposition of Utility Plt. (187)			
80	Research, Devel. and Demonstration Expend. (188)	352-353		
81	Unamortized Loss on Reaquired Debt (189)			
82	Accumulated Deferred Income Taxes (190)	234		
83	Unrecovered Purchased Gas Costs (191)			
84	Total Deferred Debits (lines 69 through 83)			
85	TOTAL ASSETS (lines 14-16, 32, 67, and 84)			

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Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

STATEMENT OF INCOME

Quarterly

1. Report in column (c) the current year to date balance. Column (c) equals the total of adding the data in column (g) plus the data in column (i) plus the data in column (k). Report in column (d) similar data for the previous year. This information is reported in the annual filing only.
2. Enter in column (e) the balance for the reporting quarter and in column (f) the balance for the same three month period for the prior year.
3. Report in column (g) the quarter to date amounts for electric utility function; in column (i) the quarter to date amounts for gas utility, and in column (k) the quarter to date amounts for other utility function for the current year quarter.
4. Report in column (h) the quarter to date amounts for electric utility function; in column (j) the quarter to date amounts for gas utility, and in column (l) the quarter to date amounts for other utility function for the prior year quarter.
5. If additional columns are needed, place them in a footnote.

Annual or Quarterly if applicable

6. Do not report fourth quarter data in columns (e) and (f)
7. Report amounts for accounts 412 and 413, Revenues and Expenses from Utility Plant Leased to Others, in another utility column in a similar manner a utility department. Spread the amount(s) over lines 2 thru 26 as appropriate. Include these amounts in columns (c) and (d) totals.
8. Report amounts in account 414, Other Utility Operating Income, in the same manner as accounts 412 and 413 above.

Line No.	Title of Account(a)	(Ref.) Page No. (b)	Total Current Year to Date Balance for Quarter/Year (c)	Total Prior Year to Date Balance for Quarter/Year (d)	Current 3 Months Ended Quarterly OnlyNo 4th Quarter (e)	Prior 3 Months Ended Quarterly OnlyNo 4th Quarter (f)
1	UTILITY OPERATING INCOME					
2	Operating Revenues (400)					
3	Operating Expenses					
4	Operation Expenses (401)					
5	Maintenance Expenses (402)					
6	Depreciation Expense (403)					
7	Depreciation Expense for Asset Retirement Costs (403.1)					
8	Amort. & Depl. of Utility Plant (404-405)					
9	Amort. of Utility Plant Acq. Adj. (406)					

10	Amort. Property Losses, Unrecov Plant and Regulatory Study Costs (407)					
11	Amort. of Conversion Expenses (407)					
12	Regulatory Debits (407.3)					
13	(Less) Regulatory Credits (407.4)					
14	Taxes Other Than Income Taxes (408.1)					
15	Income Taxes - Federal (409.1)					
16	- Other (409.1)					
17	Provision for Deferred Income Taxes (410.1)					
18	(Less) Provision for Deferred Income Taxes-Cr. (411.1)					
19	Investment Tax Credit Adj. - Net (411.4)					
20	(Less) Gains from Disp. of Utility Plant (411.6)					
21	Losses from Disp. of Utility Plant (411.7)					
22	(Less) Gains from Disposition of Allowances (411.8)					
23	Losses from Disposition of Allowances (411.9)					
24	Accretion Expense (411.10)					
24.1	*(Less) Gains from Disposition of Environmental Credits (411.11)*					
24.2	*Losses from Disposition of Environmental Credits (411.12)*					
25	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 24.2)					
26	Net Util Oper Inc (Enter Tot line 2 less 25) Carry to Pg117,line 27					

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

9. Use page 122 for important notes regarding the statement of income for any account thereof.
10. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in material refund to the utility with respect to power or gas purchases. State for each year effected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power or gas purchases.
11. Give concise explanations concerning significant amounts of any refunds made or received during the year resulting from settlement of any rate proceeding affecting revenues received or costs incurred for power or gas purches, and a summary of the adjustments made to balance sheet, income,and expense accounts.
12. If any notes appearing in the report to stokholders are applicable to the Statement of Income, such notes may be included at page 122.
13. Enter on page 122 a concise explanation of only those changes in accounting methods made during the year which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding year. Also, give the appropriate dollar effect of such changes.
14. Explain in a footnote if the previous year's/quarter's figures are different from that reported in prior reports.
15. If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles report the information in a footnote to schedule.

ELECTRIC UTILITY		GAS UTILITY		OTHER UTILITY		Line No.
Current Year to Date (in dollars) (g)	Previous Year to Date (in dollars) (h)	Current Year to Date (in dollars) (i)	Previous Year to Date (in dollars) (j)	Current Year to Date (in dollars) (k)	Previous Year to Date (in dollars) (l)	
						1
						2
						3
						4
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						23
						24
						24.1
						24.2
						25
						26

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

STATEMENT OF CASH FLOWS

(1) Codes to be used:(a) Net Proceeds or Payments;(b)Bonds, debentures and other long-term debt; (c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.
(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Period" with related amounts on the Balance Sheet.
(3) Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.
(4) Investing Activities: Include at Other (line 31) net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized per the USofA General Instruction 20; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

Line No.	Description (See Instruction No. 1 for Explanation of Codes) (a)	Current Year to Date Quarter/Year(b)	Previous Year to Date Quarter/Year(c)
1	Net Cash Flow from Operating Activities:		
2	Net Income (Line 78(c) on page 117)		
3	Noncash Charges (Credits) to Income:		
4	Depreciation and Depletion		
5	Amortization of Limited Plant		
6	Impairment of long-lived asset and losses on regulatory assets		
7	Amortization of regulatory debits/credits		
8	Deferred Income Taxes (Net)		
9	Investment Tax Credit Adjustment (Net)		
10	Net (Increase) Decrease in Receivables		
11	Net (Increase) Decrease in Inventory		
12	Net (Increase) Decrease in Allowances *and Environmental Credits* Inventory		
13	Net Increase (Decrease) in Payables and Accrued Expenses		
14	Net (Increase) Decrease in Other Regulatory Assets		
15	Net Increase (Decrease) in Other Regulatory Liabilities		
16	(Less) Allowance for Other Funds Used During Construction		
17	(Less) Undistributed Earnings from Subsidiary Companies		
18	Other (provide details in footnote):		
19	Pension		
20	Gain on disposal of noncurrent assets		
21			
22	Net Cash Provided by (Used in) Operating Activities (Total 2 thru 21)		
23			
24	Cash Flows from Investment Activities:		
25	Construction and Acquisition of Plant (including land):		
26	Gross Additions to Utility Plant (less nuclear fuel)		
27	Gross Additions to Nuclear Fuel		
28	Gross Additions to Common Utility Plant		
29	Gross Additions to Nonutility Plant		
30	(Less) Allowance for Other Funds Used During Construction		
31	Other (provide details in footnote):		
32			
33			
34	Cash Outflows for Plant (Total of lines 26 thru 33)		

35			
36	Acquisition of Other Noncurrent Assets (d)		
37	Proceeds from Disposal of Noncurrent Assets (d)		
38			
39	Investments in and Advances to Assoc. and Subsidiary Companies		
40	Contributions and Advances from Assoc. and Subsidiary Companies		
41	Disposition of Investments in (and Advances to)		
42	Associated and Subsidiary Companies		
43			
44	Purchase of Investment Securities (a)		
45	Proceeds from Sales of Investment Securities (a)		

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Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

STATEMENT OF CASH FLOWS

(1) Codes to be used:(a) Net Proceeds or Payments;(b)Bonds, debentures and other long-term debt; (c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.
(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Period" with related amounts on the Balance Sheet.
(3) Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.
(4) Investing Activities: Include at Other (line 31) net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized per the USofA General Instruction 20; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

Line No.	Description (See Instruction No. 1 for Explanation of Codes) (a)	Current Year to Date Quarter/Year(b)	Previous Year to Date Quarter/Year(c)
46	Loans Made or Purchased		
47	Collections on Loans		
48			
49	Net (Increase) Decrease in Receivables		
50	Net (Increase) Decrease in Inventory		
51	Net (Increase) Decrease in Allowances *and Environmental Credits* Held for Speculation		
52	Net Increase (Decrease) in Payables and Accrued Expenses		
53	Other (provide details in footnote):		
54			
55			
56	Net Cash Provided by (Used in) Investing Activities		
57	Total of lines 34 thru 55)		
58			
59	Cash Flows from Financing Activities:		
60	Proceeds from Issuance of:		
61	Long-Term Debt (b)		
62	Preferred Stock		
63	Common Stock		
64	Other (provide details in footnote):		
65			
66	Net Increase in Short-Term Debt (c)		
67	Other (provide details in footnote):		
68			
69			
70	Cash Provided by Outside Sources (Total 61 thru 69)		
71			
72	Payments for Retirement of:		
73	Long-term Debt (b)		
74	Preferred Stock		
75	Common Stock		
76	Other (provide details in footnote):		
77			
78	Net Decrease in Short-Term Debt (c)		

79	Bond Issuance Costs		
80	Dividends on Preferred Stock		
81	Dividends on Common Stock		
82	Net Cash Provided by (Used in) Financing Activities		
83	(Total of lines 70 thru 81)		
84			
85	Net Increase (Decrease) in Cash and Cash Equivalents		
86	(Total of lines 22,57 and 83)		
87			
88	Cash and Cash Equivalents at Beginning of Period		
89			
90	Cash and Cash Equivalents at End of period		

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FERC FORM NO. 1-F (ED. 12-22) Page 11

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d)

Line No.	Account (a)	Balance Beginning of Year (b)	Additions (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Turbogenerator Units		
13	(315) Accessory Electric Equipment		
13.1	*(315.1) Computer Hardware*		
13.2	*(315.2) Computer Software*		
13.3	*(315.3) Communication Equipment*		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbogenerator Units		
22	(324) Accessory Electric Equipment		
22.1	*(324.1) Computer Hardware*		
22.2	*(324.2) Computer Software*		
22.3	*(324.3) Communication Equipment*		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		

29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
31.1	*(334.1) Computer Hardware*		
31.2	*(334.2) Computer Software*		
31.3	*(334.3) Communication Equipment*		
32	(335) Misc. Power PLant Equipment		
33	(336) Roads, Railroads, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of lines 27 thru 34)		
35.1	*D. Solar Production Plant*		
35.2	*(338.1) Land and Land Rights*		
35.3	*(338.2) Structures and Improvements*		
35.5	*(338.4) Solar Panels*		
35.6	*(338.5) Collector System*		
35.7	*(338.6) Generator Step-up Transformers (GSU)*		
35.8	*(338.7) Inverters*		
35.9	*(338.8) Other Accessory Electrical Equipment*		
35.10	*(338.9) Computer Hardware*		
35.11	*(338.10) Computer Software*		
35.12	*(338.11) Communication Equipment*		
35.13	*(338.12) Miscellaneous Power Plant Equipment*		
35.14	*(338.13) Asset Retirement Costs for Solar Production*		
35.15	*TOTAL Solar Prod Plant (Enter Total of lines 35.2 thru 35.14)*		
35.16	*E. Wind Production Plant*		
35.17	*(338.20) Land and Land Rights*		
35.18	*(338.21) Structures and Improvements*		
35.20	*(338.23) Wind Turbines*		
35.21	*(338.24) Wind Towers and Fixtures*		
35.23	*(338.26) Collector System*		
35.24	*(338.27) Generator Step-up Transformers (GSU)*		
35.25	*(338.28) Inverters*		
35.26	*(338.29) Other Accessory Electrical Equipment*		
35.27	*(338.30) Computer Hardware*		
35.28	*(338.31) Computer Software*		
35.29	*(338.32) Communication Equipment*		
35.30	*(338.33) Miscellaneous Power Plant Equipment*		
35.31	*(338.34) Asset Retirement Costs for Wind Production*		
35.32	*TOTAL Wind Prod Plant (Enter Total of lines 35.17 thru 35.31)*		
35.33	*F. Other Renewable Production Plant*		
35.34	*(339.1) Land and Land Rights*		
35.35	*(339.2) Structures and Improvements*		
35.36	*(339.3) Fuel Holders*		
35.37	*(339.4) Boilers*		
35.39	*(339.6) Generators*		
35.41	*(339.8) Other Accessory Electrical Equipment*		
35.42	*(339.9) Computer Hardware*		
35.43	*(339.10) Computer Software*		
35.44	*(339.11) Communication Equipment*		
35.45	*(339.12) Miscellaneous Power Plant Equipment*		
35.46	*(339.13) Asset Retirement Costs for Other Renewable Production*		
35.47	*TOTAL Other Renewable Prod Plant (Enter Total of lines 35.34 thru 35.46)*		
36	[D]*G.* Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		
42.1	*(345.1) Computer Hardware*		
42.2	*(345.2) Computer Software*		
42.3	*(345.3) Communication Equipment*		
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
[44.1]	[(348) Energy Storage Equipment – Production]		
45	TOTAL Other Prod. Plant (Enter Total of lines 37 thru 44)		
46	TOTAL Prod. Plant (Enter Total of lines 16, 25, 35, *35.15, 35.32, 35.47*, and 45)		

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ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Line No.	Account (a)	Balance Beginning of Year (b)	Additions (c)
47	3. TRANSMISSION PLANT		
48	(350) Land and Land Rights		
[48.1]	[(351) Energy Storage Equipment – Transmission]		
48.2	*(351.1) Computer Hardware*		
48.3	*(351.2) Computer Software*		
48.4	*(351.3) Communication Equipment*		
49	(352) Structures and Improvements		
50	(353) Station Equipment		
51	(354) Towers and Fixtures		
52	(355) Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground Conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of lines 48 thru 57)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
[63]	[(363) Energy Storage Equipment - Distribution]		
63.1	*(363.1) Computer Hardware*		
63.2	*(363.2) Computer Software*		
63.3	*(363.3) Communication Equipment*		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	TOTAL Distribution Plant (Enter Total of lines 60 thru 74)		
76	5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT		
77	(380) Land and Land Rights		
78	(381) Structures and Improvements		
79	(382) Computer Hardware		
80	(383) Computer Software		
81	(384) Communication Equipment		
82	(385) Miscellaneous Regional Transmission and Market Operation Plant		
83	(386) Asset Retirement Costs for Regional Transmission and Market Oper		
84	TOTAL Transmission and Market Operation Plant (Total lines 77 thru 83)		
84.1	*6. ENERGY STORAGE PLANT*		
84.2	*(387.1) Land and Land Rights*		
84.3	*(387.2) Structures and Improvements*		
84.4	*(387.3) Energy Storage Equipment*		
84.6	*(387.5) Collector System*		
84.7	*(387.6) Generator Step-up Transformers (GSU)*		
84.8	*(387.7) Inverters*		
84.9	*(387.8) Computer Hardware*		

84.10	*(387.9) Computer Software*		
84.11	*(387.10) Communication Equipment*		
84.12	*(387.11) Miscellaneous Energy Storage Equipment*		
84.13	*(387.12) Asset Retirement Costs for Energy Storage*		
84.14	*TOTAL Energy Storage Plant (Total lines 84.2 thru 84.13)*		
85	[6]7. GENERAL PLANT		
86	(389) Land and Land Rights		
87	(390) Structures and Improvements		
88	(391) Office Furniture and Equipment		
89	(392) Transportation Equipment		
90	(393) Stores Equipment		
91	(394) Tools, Shop and Garage Equipment		
92	(395) Laboratory Equipment		
93	(396) Power Operated Equipment		
94	(397.*1*) [Communication Equipment] *Computer Hardware*		
94.1	*(397.2) Computer Software*		
94.2	*(397.3) Communication Equipment*		
95	(398) Miscellaneous Equipment		
96	SUBTOTAL (Enter Total of lines 86 thru 95)		
97	(399) Other Tangible Property		
98	(399.1) Asset Retirement Costs for General Plant		
99	TOTAL General Plant (Enter Total of lines 96, 97 and 98)		
100	TOTAL (Accounts 101 and 106)		
101	(102) Electric Plant Purchased (See Instr. 8)		
102	(Less) (102) Electric Plant Sold (See Instr. 8)		
103	(103) Experimental Plant Unclassified		
104	TOTAL Electric Plant in Service (Enter Total of lines 100 thru 103)		

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ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year(g)		Line No.
					1
					2
					3
					4
					5
					6
					7
					8
					9
					10
					11
					12
					13

					13.1
					13.2
					13.3
					14
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					18
					19
					20
					21
					22
					22.1
					22.2
					22.3
					23
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					27
					28
					29
					30
					31
					31.1
					31.2
					31.3
					32
					33
					34
					35
					35.1
					35.2
					35.3
					35.5
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					35.10
					35.11
					35.12
					35.13
					35.14
					35.15
					35.16
					35.17
					35.18
					35.20
					35.21
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					35.38
					35.40
					35.41

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					35.46
					35.47
					35.48
					35.49
					36
					37
					38
					39
					40
					41
					[44.1]
					42
					42.1
					42.2
					42.3
					43
					44
					45
					46

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year(g)		Line No.
					47
					48
					[48.1]
					48.2
					48.3
					48.4
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					57
					58
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					60
					61
					62
					[63]
					63.1
					63.2
					63.3
					64
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					84.1
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					84.11
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					91
					92
					93
					94
					94.1
					94.2
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					97
					98
					99
					100
					101
					102
					103
					104

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 12, column (c), and that reported for electric plant in service, pages 204-207, column d), excluding retirements of non-depreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No.	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Heldfor Future Use (d)	Electric Plant Leased to Others(e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				

4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Exp. of Elec. Plt. Leas. to Others				
6	Transportation Expenses-Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify, details in footnote):				
9					
10	TOTAL Deprec. Prov for Year (Enter Total of lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Chrgs. for Plant Ret. (Enter Total of lines 12 thru 14)				
16	Other Debit or Cr. Items (Describe, details in footnote):				
17	ARO Depr Reclassed to Reg Asset				
18	Book Cost or Asset Retirement Costs Retired				
19	Balance End of Year (Enter Totals of lines 1, 10, 15, 16, and 18)				
	Section B. Balances at End of Year According to Functional Classification				
20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
23.1	*Solar Production*				
23.2	*Wind Production*				
23.3	*Other Renewable Production*				
24	Other Production				
25	Transmission				
26	Distribution				
27	Regional Transmission and Market Operation				
27.1	*Energy Storage*				
28	General				
29	TOTAL (Enter Total of lines 20 thru 28)				

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Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of _____

ELECTRIC PRODUCTION, OTHER POWER SUPPLY EXPENSES, TRANSMISSION AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional control and market operation, energy storage, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter (b)
1	1. POWER PRODUCTION AND OTHER SUPPLY EXPENSES	
2	Steam Power Generation - Operation (500-509)	
3	Steam Power Generation - Maintenance (510-515)	
4	Total Power Production Expenses - Steam Power	
5	Nuclear Power Generation - Operation (517-525)	
6	Nuclear Power Generation – Maintenance (528-532)	
7	Total Power Production Expenses - Nuclear Power	
8	Hydraulic Power Generation - Operation (535-540.1)	
9	Hydraulic Power Generation – Maintenance (541-545.1)	
10	Total Power Production Expenses – Hydraulic Power	
10.1	*Solar Generation – Operation (558.1-558.5)*	
10.2	*Solar Generation – Maintenance (558.6-558.12)*	
10.3	*Total Power Production Expenses – Solar*	
10.4	*Wind Generation – Operation (558.13-558.17)*	
10.5	*Wind Generation – Maintenance (558.18-558.24)*	
10.6	*Total Power Production Expenses – Wind*	
10.7	*Other Renewable Generation – Operation (559.1-559.5)*	
10.8	*Other Renewable Generation – Maintenance (559.6-559.16)*	
10.9	*Total Power Production Expenses – Other Renewable*	
11	Other Power Generation - Operation (546-550.1)	
12	Other Power Generation - Maintenance (551-554.1)	
13	Total Power Production Expenses - Other Power	
14	Other Power Supply Expenses	
15	Purchased Power (555)	
15.1	Power Purchased for Storage Operations (555.1)	
15.2	*Bundled Environmental Credits (555.2)*	
15.3	*Unbundled Environmental Credits (555.3)*	
16	System Control and Load Dispatching (556)	
17	Other Expenses (557)	
18	Total Other Power Supply Expenses (line 15-17)	
19	Total Power Production Expenses (Total of lines 4, 7, 10, *10.3, 10.6, 10.9,* 13 and 18)	
20	2. TRANSMISSION EXPENSES	
21	Transmission Operation Expenses	
22	(560) Operation Supervision and Engineering	
23		
24	(561.1) Load Dispatch-Reliability	
25	(561.2) Load Dispatch-Monitor and Operate Transmission System	
26	(561.3) Load Dispatch-Transmission Service and Scheduling	
27	(561.4) Scheduling, System Control and Dispatch Services	
28	(561.5) Reliability, Planning and Standards Development	
29	(561.6) Transmission Service Studies	
30	(561.7) Generation Interconnection Studies	
31	(561.8) Reliability, Planning and Standards Development Services	
32	(562) Station Expenses	
33	(563) Overhead Line Expenses	
34	(564) Underground Line Expenses	
35	(565) Transmission of Electricity by Others	
36	(566) Miscellaneous Transmission Expenses	
37	(567) Rents	
38	(567.1) Operation Supplies and Expenses (Non-Major)	

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ELECTRIC PRODUCTION, OTHER POWER SUPPLY EXPENSES, TRANSMISSION AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional control and market operation, *energy storage,* and distribution expenses through thereporting period.

Line No.	Account (a)	Year to Date Quarter (b)
39	TOTAL Transmission Operation Expenses (Lines 22 - 38)	
40	Transmission Maintenance Expenses	
41	(568) Maintenance Supervision and Engineering	
42	(569) Maintenance of Structures	
43	(569.1) Maintenance of Computer Hardware	
44	(569.2) Maintenance of Computer Software	
45	(569.3) Maintenance of Communication Equipment	
46	(569.4) Maintenance of Miscellaneous Regional Transmission Plant	
47	(570) Maintenance of Station Equipment	
48	(571) Maintenance Overhead Lines	
49	(572) Maintenance of Underground Lines	
50	(573) Maintenance of Miscellaneous Transmission Plant	
51	(574) Maintenance of Transmission Plant	
52	TOTAL Transmission Maintenance Expenses (Lines 41 - 51)	
53	Total Transmission Expenses (Lines 39 and 52)	
54	3. REGIONAL MARKET EXPENSES	
55	Regional Market Operation Expenses	
56	(575.1) Operation Supervision	
57	(575.2) Day-Ahead and Real-Time Market Facilitation	
58	(575.3) Transmission Rights Market Facilitation	
59	(575.4) Capacity Market Facilitation	
60	(575.5) Ancillary Services Market Facilitation	
61	(575.6) Market Monitoring and Compliance	
62	(575.7) Market Facilitation, Monitoring and Compliance Services	
63	Regional Market Operation Expenses (Lines 55 - 62)	
64	Regional Market Maintenance Expenses	
65	(576.1) Maintenance of Structures and Improvements	
66	(576.2) Maintenance of Computer Hardware	
67	(576.3) Maintenance of Computer Software	
68	(576.4) Maintenance of Communication Equipment	
69	(576.5) Maintenance of Miscellaneous Market Operation Plant	
70	Regional Market Maintenance Expenses (Lines 65-69)	
71	TOTAL Regional Control and Market Operation Expenses (Lines 63,70)	
71.1	*4. ENERGY STORAGE EXPENSES*	
71.2	*Energy Storage Operation Expenses (577.1-577.5)*	
71.3	*Energy Storage Maintenance Expenses (578.1-578.7)*	
71.4	*Total Energy Storage Expenses (Lines 71.2 and 71.3)*	
72	4-5. DISTRIBUTION EXPENSES	
73	Distribution Operation Expenses (580-589)	
74	Distribution Maintenance Expenses (590-598)	
75	Total Distribution Expenses (Lines 73 and 74)	

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ELECTRIC CUSTOMER ACCOUNTS, SERVICE, SALES, ADMINISTRATIVE AND GENERAL EXPENSES

Report the amount of expenses for customer accounts, service, sales, and administrative and general expenses year to date.

Line No.	Account (a)	Year to Date Quarter (b)
1	(901-905) Customer Accounts Expenses	
2	(907-910) Customer Service and Information Expenses	
3	(911-917) Sales Expenses	
4	~~8~~9. ADMINISTRATIVE AND GENERAL EXPENSES	
5	Operations	
6	920 Administrative and General Salaries	
7	921 Office Supplies and Expenses	
8	(Less) 922 Administrative Expenses Transferred-Credit	
9	923 Outside Services Employed	
10	924 Property Insurance	
11	925 Injuries and Damages	
12	926 Employee Pensions and Benefits	
13	927 Franchise Requirements	
14	928 Regulatory Commission Expenses	
15	(Less) 929 Duplicate Charges-Credit	
16	930.1General Advertising Expenses	
17	930.2Miscellaneous General Expenses	
18	931 Rents	
19	TOTAL Operation (Total of lines 6 thru 18)	
20	Maintenance	
21	935 Maintenance of General Plant	
21.1	*935.1 Maintenance of Computer Hardware*	
21.2	*935.2 Maintenance of Computer Software*	
21.3	*935.3 Maintenance of Communication Equipment*	
21.4	*TOTAL Maintenance (Enter Total of lines 21 thru 21.3)*	
22	TOTAL Administrative and General Expenses (Total of lines 19 and 21.4)	

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MATERIALS AND SUPPLIES

For Account 154, report the amount of plant materials and operating supplies under the primary functional classifications as indicated in column (a); estimates of amounts by function are acceptable. In column (d), designate the department or departments which use the class of material.
Give an explanation of important inventory adjustments during the year (in a footnote) showing general classes of material and supplies and the various accounts (operating expenses, clearing accounts, plant, etc.) affected debited or credited. Show separately debit or credits to stores expense clearing, if applicable.

Line No.	Account (a)	Balance Beginning of Year (b)	Balance End of Year (c)	Department or Departments which Use Material(d)
1	Fuel Stock (Account 151)			
2	Fuel Stock Expenses Undistributed (Account 152)			
3	Residuals and Extracted Products (Account 153)			
4	Plant Materials and Operating Supplies (Account 154)			
5	Assigned to - Construction (Estimated)			
6	Assigned to - Operations and Maintenance			
7	Production Plant (Estimated)			
8	Transmission Plant (Estimated)			
9	Distribution Plant (Estimated)			
10	Regional Transmission and Market Operation Plant (Estimated)			
10.1	*Energy Storage Plant (Estimated)*			
11	Assigned to - Other (provide details in footnote)			
12	TOTAL Account 154 (Enter Total of lines 5 thru 11)			
13	Merchandise (Account 155)			
14	Other Materials and Supplies (Account 156)			
15	Nuclear Materials Held for Sale (Account 157) (Not applic to Gas Util)			
16	Stores Expense Undistributed (Account 163)			
17	Stored (Account 164)			
18				
19				
20	TOTAL Materials and Supplies (Per Balance Sheet)			

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Allowances *and Environmental Credits* (Accounts 158.1, [and] 158.2, *158.3, and 158.4*)

1. Report below the [particulars (]details[) called for concerning] *related to* allowances *and environmental credits. Additional information about the type of allowances/environmental credits required by other regulatory bodies can be disclosed within the footnote data.*
2. Report all acquisitions of allowances *and environmental credits* at cost.
3. Report allowances *and environmental credits* in accordance with a weighted average cost allocation method and other accounting as prescribed by General Instruction No. 21 in the Uniform System of Accounts.
4. Report the allowances *and Environmental Credits* transactions by the period they are first eligible for use: the current year's allowances *and environmental credits* in columns (b)-(c),allowances *and environmental credits* for the three succeeding years in columns (d)-(i), starting with the following year, and allowances *and environmental credits* for the remaining succeeding years in columns (j)-(k).
5. Report on line 4 [the]*authoritative agency* [Environmental Protection Agency (EPA)]issued allowances. Report withheld portions Lines 36-40.

Line No.	[SO2]Allowances Inventory*and Environmental Credits* (Accounts 158.1, *158.3, and 158.4*) (a)	Current Year No. (b)	Current Year Amt. (c)	No. (d)	Amt. (e)
1	Balance-Beginning of Year				
2					
3	Acquired During Year:				

4	Issued (Less Withheld Allow)				
5	Returned by [EPA] *authoritative agency*				
6					
7					
8	Purchases/Transfers:				
9					
10					
11					
12					
13					
14					
15	Total				
16					
17	Relinquished During Year:				
18	Charges to Account 509, *555.2, and 555.3*				
19	Other:				
20	Allowances Used				
21	Cost of Sales/Transfers:				
22					
23					
24					
25					
26					
27					
28	Total				
29	Balance-End of Year				
30					
31	Sales:				
32	Net Sales Proceeds(Assoc. Co.)				
33	Net Sales Proceeds (Other)				
34	Gains				
35	Losses				
	Allowances Withheld (Acct 158.2)				
36	Balance-Beginning of Year				
37	Add: Withheld by [EPA] *authoritative agency*				
38	Deduct: Returned by [EPA] *authoritative agency*				
39	Cost of Sales				
40	Balance-End of Year				
41					
42	Sales:				
43	Net Sales Proceeds (Assoc. Co.)				
44	Net Sales Proceeds (Other)				
45	Gains				
46	Losses				

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

Allowances *and Environmental Credits* (Accounts 158.1, [and]158.2, *158.3, and 158.4*) (Continued)

6. Report on Lines 5 allowances returned by *an authoritative* agency[the EPA]. Report on Line 39 the *authoritative* agency[EPA]'s sales of the withheld allowances. Report on Lines 43-46 the net sales proceeds and gains/losses resulting from the *authoritative* agency[EPA]'s sale or auction of the withheld allowances.
7. Report on Lines 8-14 the names of vendors/transferors of allowances *and environmental credits* acquired and identify associated companies (See "associated company" under "Definitions" in the Uniform System of Accounts).
8. Report on Lines 22 - 27 the name of purchasers/ transferees of allowances *and environmental credits* disposed of and identify associated companies.
9. Report the net costs and benefits of hedging transactions on a separate line under purchases/transfers and sales/transfers.
10. Report on Lines 32-35 and 43-46 the net sales proceeds and gains or losses from allowance *and environmental credit* sales.

				Future Years		Totals		Line
No. (f)	Amt. (g)	No. (h)	Amt. (i)	No. (j)	Amt. (k)	No. (l)	Amt. (m)	No.
								1
								2
								3
								4
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[Delete Pages 228b and 229b]

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
1	1. POWER PRODUCTION EXPENSES		
2	A. Steam Power Generation		
3	Operation		
4	(500) Operation Supervision and Engineering		
5	(501) Fuel		
6	(502) Steam Expenses		
7	(503) Steam from Other Sources		
8	(Less) (504) Steam Transferred-Cr.		
9	(505) Electric Expenses		
10	(506) Miscellaneous Steam Power Expenses		
11	(507) Rents		
12	(509) Allowances		
13	TOTAL Operation (Enter Total of Lines 4 thru 12)		
14	Maintenance		
15	(510) Maintenance Supervision and Engineering		
16	(511) Maintenance of Structures		
17	(512) Maintenance of Boiler Plant		
18	(513) Maintenance of Electric Plant		
18.1	*(513.1) Maintenance of Computer Hardware*		
18.2	*(513.2) Maintenance of Computer Software*		
18.3	*(513.3) Maintenance of Communication Equipment*		
19	(514) Maintenance of Miscellaneous Steam Plant		
20	TOTAL Maintenance (Enter Total of Lines 15 thru 19)		
21	TOTAL Power Production Expenses-Steam Power (Entr Tot lines 13 & 20)		
22	B. Nuclear Power Generation		
23	Operation		
24	(517) Operation Supervision and Engineering		
25	(518) Fuel		
26	(519) Coolants and Water		
27	(520) Steam Expenses		
28	(521) Steam from Other Sources		
29	(Less) (522) Steam Transferred-Cr.		
30	(523) Electric Expenses		
31	(524) Miscellaneous Nuclear Power Expenses		
32	(525) Rents		
33	TOTAL Operation (Enter Total of lines 24 thru 32)		
34	Maintenance		
35	(528) Maintenance Supervision and Engineering		
36	(529) Maintenance of Structures		
37	(530) Maintenance of Reactor Plant Equipment		
38	(531) Maintenance of Electric Plant		
38.1	*(531.1) Maintenance of Computer Hardware*		
38.2	*(531.2) Maintenance of Computer Software*		
38.3	*(531.3) Maintenance of Communication Equipment*		
39	(532) Maintenance of Miscellaneous Nuclear Plant		
40	TOTAL Maintenance (Enter Total of lines 35 thru 39)		
41	TOTAL Power Production Expenses-Nuc. Power (Entr tot lines 33 & 40)		
42	C. Hydraulic Power Generation		
43	Operation		
44	(535) Operation Supervision and Engineering		
45	(536) Water for Power		
46	(537) Hydraulic Expenses		
47	(538) Electric Expenses		

48	(539) Miscellaneous Hydraulic Power Generation Expenses		
49	(540) Rents		
50	TOTAL Operation (Enter Total of Lines 44 thru 49)		
51	C. Hydraulic Power Generation (Continued)		
52	Maintenance		
53	(541) Main[en]t*en*ance Supervision and Engineering		
54	(542) Maintenance of Structures		
55	(543) Maintenance of Reservoirs, Dams, and Waterways		
56	(544) Maintenance of Electric Plant		
56.1	*(544.1) Maintenance of Computer Hardware*		
56.2	*(544.2) Maintenance of Computer Software*		
56.3	*(544.3) Maintenance of Communication Equipment*		
57	(545) Maintenance of Miscellaneous Hydraulic Plant		
58	TOTAL Maintenance (Enter Total of lines 53 thru 57)		
59	TOTAL Power Production Expenses-Hydraulic Power (tot of lines 50 & 58)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

LineNo.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
60	D. Other Power Generation		
61	Operation		
62	(546) Operation Supervision and Engineering		
63	(547) Fuel		
64	(548) Generation Expenses		
[64.1]	[(548.1) Operation of Energy Storage Equipment]		
65	(549) Miscellaneous Other Power Generation Expenses		
66	(550) Rents		
67	TOTAL Operation (Enter Total of lines 62 thru 66)		
68	Maintenance		
69	(551) Maintenance Supervision and Engineering		
70	(552) Maintenance of Structures		
71	(553) Maintenance of Generating and Electric Plant		
71.1	*(553.1) Maintenance of Computer Hardware [of Energy Storage Equipment]*		
71.2	*(553.2) Maintenance of Computer Software*		
71.3	*(553.3) Maintenance of Communication Equipment*		
72	(554) Maintenance of Miscellaneous Other Power Generation Plant		
73	TOTAL Maintenance (Enter Total of lines 69 thru 72)		
74	TOTAL Power Production Expenses-Other Power (Enter Tot of 67 & 73)		
75	E. Other Power Supply Expenses		
76	(555) Purchased Power		
76.1	(555.1) Power Purchased for Storage Operations		
76.2	*(555.2) Bundled Environmental Credits*		
76.3	*(555.3) Unbundled Environmental Credits*		
77	(556) System Control and Load Dispatching		
78	(557) Other Expenses		
79	TOTAL Other Power Supply Exp (Enter Total of lines 76 thru 78)		
79.1	*F. Solar Generation*		
79.2	*Operation*		
79.3	*(558.1) Operation Supervision and Engineering*		
79.4	*(558.2) Solar Panel Generation and Other Plant Operating Expenses*		
79.6	*(558.4) Rents*		
79.7	*TOTAL Operation (Enter Total of Lines 79.3 thru 79.6)*		
79.8	*Maintenance*		
79.9	*(558.6) Maintenance Supervision and Engineering*		
79.10	*(558.7) Maintenance of Solar Panels, Structures, and Equipment*		
79.11	*(558.8) Maintenance of Computer Hardware*		
79.12	*(558.9) Maintenance of Computer Software*		
79.13	*(558.10) Maintenance of Communication Equipment*		
79.14	*(558.11) Maintenance of Miscellaneous Solar Generation Plant*		
79.15	*TOTAL Maintenance (Enter Total of lines 79.9 thru 79.14)*		

79.16	*TOTAL Power Production Expenses-Solar (total of lines 79.7 & 79.15)*		
79.17	*G. Wind Generation*		
79.18	*Operation*		
79.19	*(558.13) Operation Supervision and Engineering*		
79.20	*(558.14) Wind Turbine Generation and Other Plant Operating Expenses*		
79.21	*(558.16) Rents*		
79.22	*TOTAL Operation (Enter Total of Lines 79.19 thru 79.21)*		
79.23	*Maintenance*		
79.24	*(558.18) Maintenance Supervision and Engineering*		
79.25	*(558.19) Maintenance of Wind Turbines, Structures, and Equipment*		
79.26	*(558.20) Maintenance of Computer Hardware*		
79.27	*(558.21) Maintenance of Computer Software*		
79.28	*(558.22) Maintenance of Communication Equipment*		
79.29	*(558.23) Maintenance of Miscellaneous Wind Generation Plant*		
79.30	*TOTAL Maintenance (Enter Total of lines 79.24 thru 79.29)*		
79.31	*TOTAL Power Production Expenses-Wind (total of lines 79.22 & 79.30)*		
79.32	*H. Other Renewable Generation*		
79.33	*Operation*		
79.34	*(559.1) Operation Supervision and Engineering*		
79.35	*(559.2) Other Miscellaneous Generation and Other Plant Operating Expenses*		
79.36	*(559.3) Fuel*		
79.37	*(559.4) Rents*		
79.38	*TOTAL Operation (Enter Total of Lines 79.34 thru 79.37)*		
79.39	*Maintenance*		
79.40	*(559.6) Maintenance Supervision and Engineering*		
79.41	*(559.7) Maintenance of Structures*		
79.42	*(559.9) Maintenance of Boilers*		
79.43	*(559.10) Maintenance of Generating and Electric Equipment*		
79.44	*(559.12) Maintenance of Computer Hardware*		
79.45	*(559.13) Maintenance of Computer Software*		
79.46	*(559.14) Maintenance of Communication Equipment*		
79.47	*(559.15) Maintenance of Miscellaneous Renewable Production Plant*		
79.48	*TOTAL Maintenance (Enter Total of lines 79.40 thru 79.47)*		
79.49	*TOTAL Power Prod Exp-Other Renewable (total of lines 79.38 & 79.48)*		
80	TOTAL Power Prod Exp (Total of lines 21, 41, 59, 74, [&]79*, 79.16, 79.31, & 79.49)*		
81	2. TRANSMISSION EXPENSES		
82	Operation		
83	(560) Operation Supervision and Engineering		
84			
85	(561.1) Load Dispatch-Reliability		
86	(561.2) Load Dispatch-Monitor and Operate Transmission System		
87	(561.3) Load Dispatch-Transmission Service and Scheduling		
88	(561.4) Scheduling, System Control and Dispatch Services		
89	(561.5) Reliability, Planning and Standards Development		
90	(561.6) Transmission Service Studies		
91	(561.7) Generation Interconnection Studies		
92	(561.8) Reliability, Planning and Standards Development Services		
93	(562) Station Expenses		
[93.1]	[(562.1) Operation of Energy Storage Equipment]		
94	(563) Overhead Lines Expenses		
95	(564) Underground Lines Expenses		
96	(565) Transmission of Electricity by Others		
97	(566) Miscellaneous Transmission Expenses		
98	(567) Rents		
99	TOTAL Operation (Enter Total of lines 83 thru 98)		
100	Maintenance		
101	(568) Maintenance Supervision and Engineering		
102	(569) Maintenance of Structures		
103	(569.1) Maintenance of Computer Hardware		
104	(569.2) Maintenance of Computer Software		
105	(569.3) Maintenance of Communication Equipment		
106	(569.4) Maintenance of Miscellaneous Regional Transmission Plant		
107	(570) Maintenance of Station Equipment		
[107.1]	[(570.1) Maintenance of Energy Storage Equipment]		
108	(571) Maintenance of Overhead Lines		
109	(572) Maintenance of Underground Lines		
110	(573) Maintenance of Miscellaneous Transmission Plant		

111	TOTAL Maintenance (Total of lines 101 thru 110)		
112	TOTAL Transmission Expenses (Total of lines 99 and 111)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

LineNo.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
113	3. REGIONAL MARKET EXPENSES		
114	Operation		
115	(575.1) Operation Supervision		
116	(575.2) Day-Ahead and Real-Time Market Facilitation		
117	(575.3) Transmission Rights Market Facilitation		
118	(575.4) Capacity Market Facilitation		
119	(575.5) Ancillary Services Market Facilitation		
120	(575.6) Market Monitoring and Compliance		
121	(575.7) Market Facilitation, Monitoring and Compliance Services		
122	(575.8) Rents		
123	Total Operation (Lines 115 thru 122)		
124	Maintenance		
125	(576.1) Maintenance of Structures and Improvements		
126	(576.2) Maintenance of Computer Hardware		
127	(576.3) Maintenance of Computer Software		
128	(576.4) Maintenance of Communication Equipment		
129	(576.5) Maintenance of Miscellaneous Market Operation Plant		
130	Total Maintenance (Lines 125 thru 129)		
131	TOTAL Regional Transmission and Market Op Expns (Total 123 and 130)		
131.1	*4. ENERGY STORAGE EXPENSES*		
131.2	*Operation*		
131.3	*(577.1) Operation Supervision and Engineering*		
131.4	*(577.2) Operation of Energy Storage Equipment*		
131.5	*(577.3) Storage Fuel*		
131.6	*(577.4) Rents*		
131.7	*Total Operation (Lines 131.3 thru 131.6)*		
131.8	*Maintenance*		
131.9	*(578.1) Maintenance Supervision and Engineering*		
131.10	*(578.2) Maintenance of Energy Storage Equipment, Structures*		
131.11	*(578.3) Maintenance of Computer Hardware*		
131.12	*(578.4) Maintenance of Computer Software*		
131.13	*(578.5) Maintenance of Communication Equipment*		
131.14	*(578.6) Maintenance of Miscellaneous Other Energy Storage Plant*		
131.15	*Total Maintenance (Lines 131.9 thru 131.14)*		
131.16	*TOTAL Energy Storage Expenses (Total of 131.7 and 131.15)*		
132	[4.]*5.* DISTRIBUTION EXPENSES		
133	Operation		
134	(580) Operation Supervision and Engineering		
135	(581) Load Dispatching		
136	(582) Station Expenses		
137	(583) Overhead Line Expenses		
138	(584) Underground Line Expenses		
[138.1]	[(584.1) Operation of Energy Storage Equipment]		
139	(585) Street Lighting and Signal System Expenses		
140	(586) Meter Expenses		
141	(587) Customer Installations Expenses		
142	(588) Miscellaneous Expenses		
143	(589) Rents		
144	TOTAL Operation (Enter Total of lines 134 thru 143)		
145	Maintenance		
146	(590) Maintenance Supervision and Engineering		
147	(591) Maintenance of Structures		
148	(592) Maintenance of Station Equipment		
148.1	*(592.2) Maintenance of Computer Hardware [Energy Storage Equipment]*		
148.2	*(592.3) Maintenance of Computer Software*		
148.3	*(592.4) Maintenance of Communication Equipment*		

149	(593) Maintenance of Overhead Lines		
150	(594) Maintenance of Underground Lines		
151	(595) Maintenance of Line Transformers		
152	(596) Maintenance of Street Lighting and Signal Systems		
153	(597) Maintenance of Meters		
154	(598) Maintenance of Miscellaneous Distribution Plant		
155	TOTAL Maintenance (Total of lines 146 thru 154)		
156	TOTAL Distribution Expenses (Total of lines 144 and 155)		
157	[5.]*6.* CUSTOMER ACCOUNTS EXPENSES		
158	Operation		
159	(901) Supervision		
160	(902) Meter Reading Expenses		
161	(903) Customer Records and Collection Expenses		
162	(904) Uncollectible Accounts		
163	(905) Miscellaneous Customer Accounts Expenses		
164	TOTAL Customer Accounts Expenses (Total of lines 159 thru 163)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
165	[6.]*7.* CUSTOMER SERVICE AND INFORMATIONAL EXPENSES		
166	Operation		
167	(907) Supervision		
168	(908) Customer Assistance Expenses		
169	(909) Informational and Instructional Expenses		
170	(910) Miscellaneous Customer Service and Informational Expenses		
171	TOTAL Customer Service and Information Expenses (Total 167 thru 170)		
172	[7.]*8.* SALES EXPENSES		
173	Operation		
174	(911) Supervision		
175	(912) Demonstrating and Selling Expenses		
176	(913) Advertising Expenses		
177	(916) Miscellaneous Sales Expenses		
178	TOTAL Sales Expenses (Enter Total of lines 174 thru 177)		
179	[8.]*9.* ADMINISTRATIVE AND GENERAL EXPENSES		
180	Operation		
181	(920) Administrative and General Salaries		
182	(921) Office Supplies and Expenses		
183	(Less) (922) Administrative Expenses Transferred-Credit		
184	(923) Outside Services Employed		
185	(924) Property Insurance		
186	(925) Injuries and Damages		
187	(926) Employee Pensions and Benefits		
188	(927) Franchise Requirements		
189	(928) Regulatory Commission Expenses		
190	(929) (Less) Duplicate Charges-Cr.		
191	(930.1) General Advertising Expenses		
192	(930.2) Miscellaneous General Expenses		
193	(931) Rents		
194	TOTAL Operation (Enter Total of lines 181 thru 193)		
195	Maintenance		
196	(935) Maintenance of General Plant		
196.1	*(935.1) Maintenance of Computer Hardware*		
196.2	*(935.2) Maintenance of Computer Software*		
196.3	*(935.3) Maintenance of Communication Equipment*		
196.4	*TOTAL Maintenance (Enter Total of lines 196 thru 196.3)*		
197	TOTAL Administrative & General Expenses (Total of lines 194 and 196.*4*)		
198	TOTAL Elec Op and Maint Expns (Total 80,112,131,*131.16,*156,164,171,178,197)		

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DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Account 403, 404, 405)
(Except amortization of acquisition adjustments)

1. Report in section A for the year the amounts for : (b) Depreciation Expense (Account 403; (c) Depreciation Expense for Asset Retirement Costs (Account 403.1; (d) Amortization of Limited-Term Electric Plant (Account 404); and (e) Amortization of Other Electric Plant (Account 405).
2. Report in Section 8 the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.
3. Report all available information called for in Section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.
Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of Section C the type of plant included in any sub-account used.
In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used.
For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), if available, the weighted average remaining life of surviving plant. If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.
4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of the provisions and the plant items to which related.

A. Summary of Depreciation and Amortization Charges

Line No.	Functional Classification(a)	Depreciation Expense (Account 403)(b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization of Limited Term Electric Plant (Account 404) (d)	Amortization of Other Electric Plant (Acc 405) (e)	Total(f)
1	Intangible Plant					
2	Steam Production Plant					
3	Nuclear Production Plant					
4	Hydraulic Production Plant-Conventional					
5	Hydraulic Production Plant-Pumped Storage					
5.1	*Solar Production Plant*					
5.2	*Wind Production Plant*					
5.3	*Other Renewable Production Plant*					
6	Other Production Plant					
7	Transmission Plant					
8	Distribution Plant					
9	Regional Transmission and Market Operation					
9.1	*Energy Storage Plant*					
10	General Plant					
11	Common Plant-Electric					
12	TOTAL					

B. Basis for Amortization Charges

[The amortization charges shown in Column (d), Line 1 - Intangible Plant, represent the straight line amortization of the development costs related to software. See note for Column (d), Line 1 for additional details regarding the system software included in Intangible Plant. Note that software is typically amortized over a 5 year period unless another life is deemed more appropriate.]

[The amortization charges shown in Column (d), Line 11 - Common Plant-Electric, represent the straight line amortization of the development costs related to software. See note for Column (d), Line 11 for additional details regarding the system software included in Common Plant. Note that software is typically amortized over a 5 year period unless another life is deemed more appropriate.]

This schedule excludes all amortized Limited Term Plant ([software,] leasehold improvements, right of ways, etc.).

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RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES

1. Describe and show below costs incurred and accounts charged during the year for technological research, development, and demonstration (R, D & D) project initiated, continued or concluded during the year. Report also support given to others during the year for jointly-sponsored projects.(Identify recipient regardless of affiliation.) For any R, D & D work carried with others, show separately the respondent's cost for the year and cost chargeable to others (See definition of research, development, and demonstration in Uniform System of Accounts).
2. Indicate in column (a) the applicable classification, as shown below:

Classifications:

A. Electric R, D & D Performed Internally:
(1) Generation
a. hydroelectric
i. Recreation fish and wildlife
ii Other hydroelectric
b. Fossil-fuel steam
c. Internal combustion or gas turbine
d. Nuclear
e. *Solar*
f. *Wind*
g. *Other renewable*
h. [e.]Unconventional generation
i. [f.]Siting and heat rejection
(2) Transmission
a. Overhead
b. Underground
(3) Distribution
(4) Regional Transmission and Market Operation
(5) Energy Storage
([5]*6*) Environment (other than equipment)
([6]*7*) Other (Classify and include items in excess of $50,000.)
([7]*8*) Total Cost Incurred
B. Electric, R, D & D Performed Externally:
(1) Research Support to the electrical Research Council or the Electric Power Research Institute

Line No.	Classification(a)	Description (b)
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Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

DISTRIBUTION OF SALARIES AND WAGES

Report below the distribution of total salaries and wages for the year. Segregate amounts originally charged to clearing accounts to Utility Departments, Construction, Plant Removals, and Other Accounts, and enter such amounts in the appropriate lines and columns provided. In determining this segregation of salaries and wages originally charged to clearing accounts, a method of approximation giving substantially correct results may be used.

Line No.	Classification (a)	Direct Payroll Distribution (b)	Allocation of Payroll charged forClearing Accounts (c)	Total (d)
1	Electric			
2	Operation			
3	Production			
4	Transmission			
5	Regional Market			
5.1	*Energy Storage*			
6	Distribution			
7	Customer Accounts			
8	Customer Service and Informational			
9	Sales			
10	Administrative and General			
11	TOTAL Operation (Enter Total of lines 3 thru 10)			
12	Maintenance			
13	Production			
14	Transmission			
15	Regional Market			
15.1	*Energy Storage*			
16	Distribution			
17	Administrative and General			
18	TOTAL Maintenance (Total of lines 13 thru 17)			
19	Total Operation and Maintenance			
20	Production (Enter Total of lines 3 and 13)			
21	Transmission (Enter Total of lines 4 and 14)			
22	Regional Market (Enter Total of Lines 5 and 15)			
22.1	*Energy Storage (Enter Total of Lines 5.1 and 15.1)*			
23	Distribution (Enter Total of lines 6 and 16)			
24	Customer Accounts (Transcribe from line 7)			
25	Customer Service and Informational (Transcribe from line 8)			
26	Sales (Transcribe from line 9)			
27	Administrative and General (Enter Total of lines 10 and 17)			
28	TOTAL Oper. and Maint. (Total of lines 20 thru 27)			
29	Gas			
30	Operation			
31	Production-Manufactured Gas			
32	Production-Nat. Gas (Including Expl. and Dev.)			
33	Other Gas Supply			
34	Storage, LNG Terminaling and Processing			
35	Transmission			
36	Distribution			
37	Customer Accounts			
38	Customer Service and Informational			
39	Sales			
40	Administrative and General			
41	TOTAL Operation (Enter Total of lines 31 thru 40)			
42	Maintenance			
43	Production-Manufactured Gas			
44	Production-Natural Gas (Including Exploration and Development)			
45	Other Gas Supply			
46	Storage, LNG Terminaling and Processing			

47	Transmission		

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ELECTRIC ENERGY ACCOUNT

Report below the information called for concerning the disposition of electric energy generated, purchased, exchanged and wheeled during the year.

Line No.	Item (a)	MegaWatt Hours(b)	Line No.	Item (a)	MegaWatt Hours (b)
1	SOURCES OF ENERGY		21	DISPOSITION OF ENERGY	
2	Generation (Excluding Station Use):		22	Sales to Ultimate Consumers (Including Interdepartmental Sales)	
3	Steam				
4	Nuclear		23	Requirements Sales for Resale (See instruction 4, page 311.)	
5	Hydro-Conventional				
6	Hydro-Pumped Storage		24	Non-Requirements Sales for Resale (See instruction 4, page 311.)	
6.1	*Solar*				
6.2	*Wind*				
6.3	*Other Renewable*				
7	Other				
8	Less Energy for Pumping		25	Energy Furnished Without Charge	
9	Net Generation (Enter Total of lines 3 through 8)		26	Energy Used by the Company (Electric Dept Only, Excluding Station Use)	
10	Purchases (other than for Energy Storage)		27	Total Energy Losses	
10.1	Purchases for Energy Storge		27.1	Total Energy Stored	
11	Power Exchanges:		28	TOTAL (Enter Total of Lines 22 Through 27.1) (MUST EQUAL LINE 20)	
12	Received				
13	Delivered				
14	Net Exchanges (Line 12 minus line 13)				
15	Transmission For Other (Wheeling)				
16	Received				
17	Delivered				
18	Net Transmission for Other (Line 16 minus line 17)				
19	Transmission By Others Losses				
20	TOTAL (Enter Total of lines 9, 10, 10.1, 14, 18 and 19)				

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RENEWABLE GENERATING PLANT STATISTICS (Large Plants)

1. Report data for plant in Service only. 2. Report in this page renewable plants of 10,000 Kw or more. 3. Indicate by a footnote any plant leased or operated as a joint facility. 4. If net peak demand for 60 minutes is not available, give data which is available, specifying period. 5. Items under Cost of Plant are based on U. S. of A. Accounts. Production expenses do not include Purchased Power, System Control and Load Dispatching, and Other Expenses Classified as Other Power Supply Expenses.

Line No.	Item (a)	Plant Name: (b)	Plant Name: (c)
1	Kind of Plant (Solar, Wind, Biomass, etc.)		
2	Type of Constr (PV Tracking, Offshore, Boiler, etc)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total Installed Cap (Max Gen Name Plate Ratings-MW)		
6	Net Peak Demand on Plant - MW (60 minutes)		
7	Plant Hours Connected to Load		
8	Net Continuous Plant Capability (Megawatts)		
9	Net Generation, Exclusive of Plant Use - KWh		
10	Cost of Plant: Land and Land Rights		
11	Structures and Improvements		
12	Solar Panels, Wind Turbines, and Generators		
13	Fuel Holders		
14	Boilers		
15	Collector System		
16	Generator Step-up Transformers (GSU)		
17	Inverters		
18	Other Accessory Electrical Equipment		
19	Computer Hardware		
20	Computer Software		
21	Communication Equipment		
22	Miscellaneous Power Plant Equipment		
23	Asset Retirement Costs		
24	Total Cost (10-23)		
25	Cost per KW of Installed Capacity (line 24/5) Including		
26	Production Expenses: Oper, Supv, & Engr		
27	Generation and Other Plant Operating Expenses		
28	Fuel		
29	Steam Expenses		
30	Electric Expenses		
31	Misc Steam Power Expenses		
32	Rents		
33	Environmental Credits		
34	Maintenance Supervision and Engineering		
35	Maintenance of Structures and Equipment		
36	Maintenance of Boiler Plant		
37	Maintenance of Electric Plant		
38	Maintenance of Computer Hardware		
39	Maintenance of Computer Software		
40	Maintenance of Communication Equipment		
41	Maintenance of Misc Plant		
42	Total Production Expenses		
43	Expenses per Net KWh		

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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____
GENERATING PLANT STATISTICS (Small Plants)			

1. Small generating plants are steam plants of, less than 25,000 Kw; internal combustion and gas turbine-plants, conventional hydro plants, [~~and~~] pumped storage plants, *and renewable plants* of less than 10,000 Kw installed capacity (name plate rating). 2. Designate any plant leased from others, operated under a license fromthe Federal Energy Regulatory Commission, or operated as a joint facility, and give a concise statement of the facts in a footnote. If licensed project, give project number in footnote.

Line No.	Name of Plant(a)	Year Orig. Const. (b)	Installed Capacity Name Plate Rating (In MW) (c)	Net Peak Demand MW (60 min.)(d)	Net Generation Excluding Plant Use (e)	Cost of Plant(f)
1						
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____
GENERATING PLANT STATISTICS (Small Plants) (Continued)			

3. List plants appropriately under subheadings for steam, hydro, nuclear, *renewable,* internal combustion and gas turbine plants. For nuclear, see instruction 11, Page 403. 4. If net peak demand for 60 minutes is not available, give the which is available, specifying period. 5. If any plant is equipped with combinations of steam, hydro internal combustion or gas turbine equipment, report each as a separate plant. However, if the exhaust heat from the gasturbine is utilized in a steam turbine regenerative feed water cycle, or for preheated combustion air in a boiler, report as one plant.

Plant Cost (Incl Asset Retire. Costs) Per MW (g)	OperationExc'l. Fuel (h)	Production Expenses		Kind of Fuel(k)	Fuel Costs (in cents (per Million Btu) (l)	Line No.
		Fuel (i)	Maintenance (j)			
						1
						2
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FERC FORM NO. 1 (ED. 12-22) Page 411

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of

ENERGY STORAGE OPERATIONS (Large Plants)

1. Large Plants are plants of 10,000 KW or more.
2. In columns (a) *and* (b) [and (c)] report the name of the energy storage project[, functional classification (Production, Transmission, Distribution)], and location.

3. In column ([d] *c*), report Megawatt hours (MWH) purchased, generated, or received in exchange transactions for storage.
4. In column[s] [(e)] *(d)* [(f) and (g)] report MWHs delivered to the grid to support production, transmission and distribution. The amount reported in column [(d)] *(c)* should include MWHs delivered/provided to a generator's own load requirements or used for the provision of ancillary services.
5. In column[s] [(h), (i), and (j)] *(e),* report MWHs lost during conversion, storage and discharge of energy.
6. In column [(k)] *(f)* report the MWHs sold.
7. In column [(l)]*(g),* report revenues from energy storage operations. In a footnote, disclose the revenue accounts and revenue amounts related to the income generating activity.
8. In column [(m)] *(h),* report the cost of power purchased for storage operations and reported in Account 555.1, Power Purchased for Storage Operations. If power was purchased from an affiliated seller specify how the cost of the power was determined. In columns [(n) and (o)] *(i) and (j),* report fuel costs for storage operations associated with self-generated power included in Account 501 and other costs associated with self-generated power.
9. In column[s (q), (r) and (s)] *(l)* report the total project plant costs including but not exclusive of land and land rights, structures and improvements, energy storage equipment, turbines, compressors, generators, switching and conversion equipment, lines and equipment whose primary purpose is to integrate or tie energy storage assets into the power grid, and any other costs associated with the energy storage project included in the property accounts listed.

Line No.	Name of the Energy Storage Project (a)	[Functional Classification (b)]	Location of the Project ([c]*b*)	MWHs ([d]*c*)
1		Delete col		
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3				
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32				
33				
34				
35	TOTAL			

Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Large Plants) (Continued)

Line No.	MWHs delivered to the grid [to support] *(d)*			MWHs Lost During Conversion, Storage and Discharge of Energy *(e)*			MWHs Sold ([k]*f*)	Revenues from Energy Storage Operations ([l]*g*)
[Line No.]	[Production ([e]]	[Transmission ([f]]	[Distribution ([g]]	[Production ([h]]	[Transmission ([i]]	[Distributio n ([j]]		
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Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Large Plants) (Continued)

Line No.	Power Purchased for Storage Operations (555.1) (Dollars) ([m]*h*)	Fuel Costs from associated fuel accounts for Storage Operations Associated with Self-Generated Power (Dollars) ([n]*i*)	Other Costs Associated with Self-Generated Power (Dollars) ([o]*j*)	Project Costs included in ([p]*k*)	[Production (Dollars) (q)] *Total Project Plant Costs (l)*	[Transmission (Dollars) (r)]	[Distribution (Dollars) (s)]
1				Account 101		Delete col	Delete col
2				Account 103			
3				Account 106			
4				Account 107			
5				Other			
6							
7							
8							
9							
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28							
29							
30				Total			

Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Small Plants)

1. Small Plants are plants less than 10,000 KW.
2 In columns (a)[,] *and* (b) [and (c)] report the name of the energy storage project, [functional classification (Production, Transmission, Distribution)], and location.
3. In column ([d]*c*), report project plant cost including but not exclusive of land and land rights, structures and improvements, energy storage equipment and any other costs associated with the energy storage project.
4. In column ([e]*d*), report operation expenses excluding fuel, ([f]*e*), maintenance expenses, ([g]*f*) fuel costs for storage operations and ([h]*g*) cost of power purchased for storage operations and reported in Account 555.1, Power Purchased for Storage Operations. If power was purchased from an affiliated seller specify how the cost of the power was determined.
5. If any other expenses, report in column ([i]*h*) and footnote the nature of the item(s).

Line No.	Name of the Energy Storage Project (a)	[Functional Classification (b)]	Location of the Project ([c]*b*)	Project Cost ([d]*c*)
1		Delete col		
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35				
36	TOTAL			

Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Small Plants)(Continued)

	Plant Operating Expenses				
Line No.	Operations (Excluding Fuel used in Storage Operations) ([e]*d*)	Maintenance ([f]*e*)	Cost of fuel used in storage operations ([g]*f*)	Account No. 555.1, Power Purchased for Storage Operations ([h]*g*)	Other Expenses ([I]*h*)
1					
2					
3					
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Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART III: COMPARATIVE BALANCE SHEET

	Assets and Other Debits *(a)*	Balance at Beginning of Year *(b)*	Balance at End of Year *(c)*
01	Utility plant *(101 - 107, 114, 118)*		
02	Accumulated Provision for Depreciation and Amortization *(110, 119)*		
03	NET UTILITY PLANT *(Enter total of line 01 less 02)*		
04	Utility Plant Adjustments *(116)*		
05	Gas Stored Underground - Noncurrent		
06	Nonutility Property *(121)*		
07	Less Accumulated Provision For Depreciation and Amortization - Credit *(122)*		
08	Noncurrent Portion of Allowances *and Environmental Credits*		
09	Other Investments and Special Funds *(124-129)*		
10	Current and Accrued Assets:		
11	Cash and Working Funds *(130)*		
12	Temporary Cash Investments *(136)*		
13	Notes and Accounts Receivable *(141, 142, 143, 145, 146)* *(Report amounts applicable to associated companies in a footnote)*		
14	Accumulated provision for Uncollectible Accounts - Credit *(144)*		
15	Plant Materials and Operating Supplies *(154)*		
16	Allowances *and Environmental Credits (158.1, [and]158.2, 158.3, and 158.4)*		
17	(Less) Noncurrent Portion of Allowances *and Environmental Credits*		
18	Gas Stored *(164.1, 164.2)*		
19	Prepayments *(165)*		
20	Miscellaneous Current and Accrued Assets *(174)*		
21	Derivative Instrument Assets (175)		
22	Derivative Instruments Assets - Hedges (176)		
23	TOTAL CURRENT AND ACCRUED ASSETS *(Enter total of lines 11 thru 22)*		
24	Deferred Debits:		
25	Unamortized Debt Expense *(181)*		
26	Extraordinary Property Losses *(182.1)*		
27	Unrecovered Plant and Regulatory Study Costs *(182.2)*		
28	Other Regulatory Assets *(182.3)*		
29	Miscellaneous Deferred Debits *(186)*		
30	Deferred Losses from Disposition of Utility Plant *(187)*		
31	Unamortized Loss on Reacquired Debt *(189)*		
32	Accumulated Deferred Income Taxes *(190)*		
33	Unrecovered Purchased Gas Costs *(191)*		
34	TOTAL DEFERRED DEBITS *(Enter total of Lies 25 thru 33)*		
35	TOTAL ASSETS AND OTHER DEBITS *(Enter total lines 03 thru 09, 23 and 34)*		

Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART IV: STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts 412 and 413, Revenues and expenses from Utility Plant Leased to Others, in the Other Utility column (h, I or j, k) in a similar manner to a utility department. Spread the amount(s) over lines 01 to 22 as appropriate. Include these amounts in column (b) and (c) totals.

2. Report amounts for acc ount 414, Other Utility Operating Income, in the same manner as accounts 412 and 413.

3. Provide an explanation in Part VII. Notes to Financial Statements, of such unsettled rate proceedings where a contingency exists that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects; include an explanation for the major factors which affect the rights of the utility to retain such revenues or to recover amounts paid with respect to power or gas purchases.

	Accou nt (a)	Total (d to k)		Electric Utility	
		Current Year *(b)*	Change From Previous Year (c)	Current Year *(d)*	Change From previous Year (e)
01	UTILITY OPERATING INCOME				
02	Operating Revenues *(400)*				
03	Operating Expenses:				
04	Operating Expenses (401)				
05	Maintenance Expense (402)				
06	Depreciation Expense (403)				
07	Depreciation Expense for Asset Retirement Costs (403.1)				
08	Amortization Expense (Specify by account)				
09					
10	Regulatory Debits (407.3)				
11	(Less) Regulatory Credits (407.4)				
12	Taxes Other Than Income Taxes (408.1)				
13	Federal Income Taxes (409.1)				
14	Other Income Taxes (409. 1)				
15	Provision For Deferred Income Taxes (410.1)				
16	Provision For Deferred Income Taxes - Credit (411.1)				
17	Investment Tax Credit Adjustments - Net (411.4)				
18	Gains From Disposition of Utility Plant (411.6)				
19	Losses From Disposition of Utility Plant (411.7)				
20	Gains From Disposition of Allowances (411.8)				
21	Losses From Disposition of Allowances (411.9)				
22	Accretion Expense (411.10)				
22.1	*Gains From Disposition of Environmental Credits (411.11)*				
22.2	*Losses From Disposition of Environmental Credits (411.12)*				
23	TOTAL UTILITY OPERATING EXPENSES *(Enter total of lines 04 thru 22.2)*				
24	Net Utility Operating Income *(Enter total of* line 02 less 23)				

Name of Respondent	This Report is: (1) G An Original	Date of Report *(Mo, Da, Yr)*	Year of Report

	(2) G A Resubmission		Dec 31, _____

PART IX: ALLOWANCES *AND Environmental Credits* (Accounts 158.1, [and]158.2, *158.3, and 158.4*)

1. Report below the [particulars (]details[) called for concerning] *related to* allowances *and environmental credits. Additional information about the type of allowances/environmental credits required by other regulatory bodies can be disclosed within the footnote data.*
2. Report all acquisitions of allowances *and environmental credits* at cost.
3. Report allowances *and environmental credits* in accordance with a weighted average cost allocation method and other accounting as prescribed by General Instruction No. 21 in the Uniform System of Accounts.
4. Report the allowances *and environmental credits* transactions by the period they are first eligible for use: the current year's allowances *and environmental credits* in columns (b)-(c), allowances *and environmental credits* for the three succeeding years in columns (d)-(l), starting with the following year, and allowances *and environmental credits* for the remaining succeeding years in columns (j)-(k).
5. Report on line 4 the *authoritative agency* [Environmental Protection Agency (EPA)] issued allowances. Report withheld portions on lines 36-40.

Line No	Allowance Inventory *and Environmental Credits* (Accounts 158.1, 158.3, *and 158.4*) (a)	Current Year		20____	
		No (b)	Amt. (c)	No. (d)	Amt. (e)
01	Balance--Beginning of Year				
02					
03	Acquired During Year:				
04	Issued (Less Withheld Allow.)				
05	Returned by [EPA] *authoritative agency*				
06					
07	Purchases/Transfers:				
08					
09					
10					
11					
12					
13					
14					
15	Total				
16					
17	Relinquished During Year:				
18	Charges to Account 509*, 555.2, and 555.3*				
19	Other.				
20					
21	Cost of Sales Transfers:				
22					
23					
24					
25					
26					
27					
28	Total				
29	Balance-End of Year				
30					
31	Sales:				
32	Net Sales Proceeds (Assoc. Co.)				
33	Net Sales Proceeds (Other)				
34	Gains				
35	Losses				
	Allowances Withheld Account 158.2)				
36	Balance-Beginning of Year				
37	Add: Withheld by [EPA] *authoritative agency*				
38	Deduct: Returned by [EPA] *authoritative agency*				
39	Cost of Sales				
40	Balance-End of Year				
41					

42	Sales:				
43	Net Sales Proceeds (Assoc. Co.)				
44	Net Sale Proceeds (Other)				
45	Gains				
46	Losses				

Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART IX: ALLOWANCES AND Environmental Credits (Accounts 158.1 [and]158.2, 158.3, and 158.4) (Continued)

6. Report on line 5 allowances returned by an *authoritative agency* [the EPA]. Report on line 39 the *authoritative agency* [EPA]'s sales of the withheld allowances. Report on lines 43-46 the net sales proceeds and gains/losses resulting from the *authoritative agency*[EPA]'s sale or auction of the withheld allowances.
7. Report on lines 8-14 the names of vendors/transferors of allowances *and environmental credits* acquired and identify associated companies (See "associated company" under "Definitions" in the Uniform System of Accounts).
8. Report lines 22-27 the names of purchasers/transferees of allowances *and environmental credits* disposed of and identify associated companies.
9. Report the net costs and benefit s of hedging transactions on a separate line under purchases/transfers and sales/transfers.
10. Report on lines 32-35 & 43-46 the net sales proceeds and gains or losses from allowance *and environmental credit* sales.

20____		19____		Future Years		Totals		
No. (f)	Amt. (g)	No. (h)	Amt. (I)	No. (j)	Amt. (k)	No. (l)	Amt. (m)	Line No.
								01
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PART XVII: ELECTRIC OPERATION AND MAINTENANCE EXPENSES

LINE NO	ITEM (a)	OPERATION & MAINTENANCE EXPENSES (b)
		$
1	Production expenses:	
2	Steam generation	
3	Hydraulic generation	
4	Other generation	
5	Purchased power (including power exchanges)	
6	Other power supply expenses	
6.1	*Solar generation*	
6.2	*Wind generation*	
6.3	*Other renewable generation*	
7	Total production expenses	$
8	Transmission expenses	
8.1	*Energy storage expenses*	
9	Distribution expenses	
10	Customer accounts expenses	
11	Customer service and informational expenses	
12	Sales expenses	
13	Administrative and general expenses	
14	Total electric operation and maintenance expenses	$

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Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART XX: UTILITY PLANT DATA

Line No.	Item (a)	Balance at Beginning of Year (b)	Additions During Year (c)	Retirements During Year (d)	Transfers and Adjustments (e)	Balance at End of Year (f)
1	Electric utility plant					
2	Electric plant in service:					
3	Intangible plant					
4	Production Plant:					
5	Steam production					
6	Hydraulic production					
6.1	*Solar production*					
6.2	*Wind production*					
6.3	*Other renewable prod*					
7	Other production					
8	Transmission plant					
9	Distribution plant					
10	*Energy storage plant*					
11	General plant					
12	Total electric plant in					
	*S*ervice[s]					
13	Property Under Capital Leases					
14	Electric plant purchased . . .					
15	Electric plant sold					
16	Electric plant in process of reclassification					
17	Electric plant leased to others					
18	Electric plant held for future use					
19	Construction work in progress -Electric					
20	Electric plant acquisition adjustments					
21	Other electric plant adjustments (explain)					
22	. . . . .					
23	Total electric plant . . .					
24	Plant of other utility departments (specify)					
25						
26						
27						
28						
29						
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46						
47	Total Utility Plant....					

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Line No.	Account Number (a)	Title of Account (b)	Associate Company Direct Cost (c)	Associate Company Indirect Cost (d)	Associate Company Total Cost (e)	Nonassociate Company Direct Cost (f)	Nonassociate Company Indirect Cost (g)	Nonassociate Company Total Cost (h)
35	517-525	Total Nuclear Power Generation Operation Expenses						
36	528-532	Total Nuclear Power Generation Maintenance Expenses						
37	535-540.1	Total Hydraulic Power Generation Operation Expenses						
38	541-545.1	Total Hydraulic Power Generation Maintenance Expenses						
39	546-550.1	Total Other Power Generation Operation Expenses						
40	551-554.1	Total Other Power Generation Maintenance Expenses						
41	555-557	Total Other Power Supply Operation Expenses						
41.1	*558.1-558.5*	*Total Solar Power Generation Operation Expenses*						
41.2	*558.6-558.12*	*Total Solar Power Generation Maintenance Expenses*						
41.3	*558.13-558.17*	*Total Wind Power Generation Operation Expenses*						
41.4	*558.18-558.24*	*Total Wind Power Generation Maintenance Expenses*						
41.5	*559.1-559.5*	*Total Other Renewable Power Generation Operation Expenses*						
41.6	*559.6-559.16*	*Total Other Renewable Power Generation Maintenance Expenses*						
42	560	Operation Supervision and Engineering						
43	561.1	Load Dispatch-Reliability						
44	561.2	Load Dispatch-Monitor and Operate Transmission System						
45	561.3	Load Dispatch-Transmission Service and Scheduling						
46	561.4	Scheduling, System Control and Dispatch Services						
47	561.5	Reliability Planning and Standards Development						
48	561.6	Transmission Service Studies						
49	561.7	Generation Interconnection Studies						
50	561.8	Reliability Planning and Standards Development Services						
51	562	Station Expenses (Major Only)						
52	563	Overhead Line Expenses (Major Only)						
53	564	Underground Line Expenses (Major Only)						
54	565	Transmission of Electricity by Others (Major Only)						

55	566	Miscellaneous Transmission Expenses (Major Only)						
56	567	Rents						
57	567.1	Operation Supplies and Expenses (Nonmajor Only)						
58		Total Transmission Operation Expenses						
59	568	Maintenance Supervision and Engineering (Major Only)						
60	569	Maintenance of Structures (Major Only)						
61	569.1	Maintenance of Computer Hardware						
62	569.2	Maintenance of Computer Software						
63	569.3	Maintenance of Communication Equipment						
64	569.4	Maintenance of Miscellaneous Regional Transmission Plant						
65	570	Maintenance of Station Equipment (Major Only)						
66	571	Maintenance of Overhead Lines (Major Only)						
67	572	Maintenance of Underground Lines (Major Only)						
68	573	Maintenance of Miscellaneous Transmission Plant (Major Only)						

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Line No.	Account Number (a)	Title of Account (b)	Associate Company Direct Cost (c)	Associate Company Indirect Cost (d)	Associate Company Total Cost (e)	Nonassociate Company Direct Cost (f)	Nonassociate Company Indirect Cost (g)	Nonassociate Company Total Cost (h)
69	574	Maintenance of Transmission Plant (Nonmajor Only)						
70		Total Transmission Maintenance Expenses						
71	575.1-575.8	Total Regional Market Operation Expenses						
72	576.1-576.5	Total Regional Market Maintenance Expenses						
72.1	*577.1-577.5*	*Total Energy Storage Operation Expenses*						
72.2	*578.1-578.7*	*Total Energy Storage Maintenance Expenses*						
73	580-589	Total Distribution Operation Expenses						
74	590-598	Total Distribution Maintenance Expenses						
75		Total Electric Operation and Maintenance Expenses						
76	700-798	Production Expenses (Provide selected accounts in a footnote)						
77	800-813	Total Other Gas Supply Operation Expenses						
78	814-826	Total Underground Storage Operation Expenses						
79	830-837	Total Underground Storage Maintenance Expenses						
80	840-842.3	Total Other Storage Operation Expenses						
81	843.1-843.9	Total Other Storage Maintenance Expenses						
82	844.1-846.2	Total Liquefied Natural Gas Terminaling and Processing Operation Expenses						
83	847.1-847.8	Total Liquefied Natural Gas Terminaling and Processing Maintenance Expenses						
84	850	Operation Supervision and Engineering						
85	851	System Control and Load Dispatching.						
86	852	Communication System Expenses						
87	853	Compressor Station Labor and Expenses						
88	854	Gas for Compressor Station Fuel						
89	855	Other Fuel and Power for Compressor Stations						
90	856	Mains Expenses						
91	857	Measuring and Regulating Station Expenses						
92	858	Transmission and Compression of Gas By Others						
93	859	Other Expenses						
94	860	Rents						

95		Total Gas Transmission Operation Expenses						
96	861	Maintenance Supervision and Engineering						
97	862	Maintenance of Structures and Improvements						
98	863	Maintenance of Mains						
99	864	Maintenance of Compressor Station Equipment						
100	865	Maintenance of Measuring And Regulating Station Equipment						
101	866	Maintenance of Communication Equipment						
102	867	Maintenance of Other Equipment						
103		Total Gas Transmission Maintenance Expenses						
104	870-881	Total Distribution Operation Expenses						

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Line No.	Account Number (a)	Title of Account (b)	Associate Company Direct Cost (c)	Associate Company Indirect Cost (d)	Associate Company Total Cost (e)	Nonassociate Company Direct Cost (f)	Nonassociate Company Indirect Cost (g)	Nonassociate Company Total Cost (h)
105	885-894	Total Distribution Maintenance Expenses						
106		Total Natural Gas Operation and Maintenance Expenses						
107	901	Supervision						
108	902	Meter reading expenses						
109	903	Customer records and collection expenses						
110	904	Uncollectible accounts						
111	905	Miscellaneous customer accounts expenses						
112	906	Total Customer Accounts Operation Expenses						
113	907	Supervision						
114	908	Customer assistance expenses						
115	909	Informational And Instructional Advertising Expenses						
116	910	Miscellaneous Customer Service And Informational Expenses						
117		Total Service and Informational Operation Accounts						
118	911	Supervision						
119	912	Demonstrating and Selling Expenses						
120	913	Advertising Expenses						
121	916	Miscellaneous Sales Expenses						
122		Total Sales Operation Expenses						
123	920	Administrative and General Salaries						
124	921	Office Supplies and Expenses						
125	923	Outside Services Employed						
126	924	Property Insurance						
127	925	Injuries and Damages						
128	926	Employee Pensions and Benefits						
129	928	Regulatory Commission Expenses						
130	930.1	General Advertising Expenses						
131	930.2	Miscellaneous General Expenses						
132	931	Rents						
133		Total Administrative and General Operation Expenses						
134	935	Maintenance of Structures and Equipment						
135	*935.1*	*Maintenance of Computer Hardware*						
136	*935.2*	*Maintenance of Computer Software*						
137	*935.3*	*Maintenance of Communication Equipment*						
138[5]		Total Administrative and General Maintenance Expenses						
139[6]		Total Cost of Service						

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Schedule XVI- Analysis of Charges for Service- Associate and Non-Associate Companies (continued)

Line No.	Account Number (a)	Title of Account (b)	Total Charges for Services Direct Cost (i)	Total Charges for Services Indirect Cost (j)	Total Charges for Services Total Cost (k)
35	517-525	Total Nuclear Power Generation Operation Expenses			
36	528-532	Total Nuclear Power Generation Maintenance Expenses			
37	535-540.1	Total Hydraulic Power Generation Operation Expenses			
38	541-545.1	Total Hydraulic Power Generation Maintenance Expenses			
39	546-550.1	Total Other Power Generation Operation Expenses			
40	551-554.1	Total Other Power Generation Maintenance Expenses			
41	555-557	Total Other Power Supply Operation Expenses			
41.1	*558.1-558.5*	*Total Solar Power Generation Operation Expenses*			
41.2	*558.6-558.12*	*Total Solar Power Generation Maintenance Expenses*			
41.3	*558.13-558.17*	*Total Wind Power Generation Operation Expenses*			
41.4	*558.18-558.24*	*Total Wind Power Generation Maintenance Expenses*			
41.5	*559.1-559.5*	*Total Other Renewable Power Generation Operation Expenses*			
41.6	*559.6-559.16*	*Total Other Renewable Power Generation Maintenance Expenses*			
42	560	Operation Supervision and Engineering			
43	561.1	Load Dispatch-Reliability			
44	561.2	Load Dispatch-Monitor and Operate Transmission System			
45	561.3	Load Dispatch-Transmission Service and Scheduling			
46	561.4	Scheduling, System Control and Dispatch Services			
47	561.5	Reliability Planning and Standards Development			
48	561.6	Transmission Service Studies			
49	561.7	Generation Interconnection Studies			
50	561.8	Reliability Planning and Standards Development Services			
51	562	Station Expenses (Major Only)			
52	563	Overhead Line Expenses (Major Only)			
53	564	Underground Line Expenses (Major Only)			
54	565	Transmission of Electricity by Others (Major Only)			

55	566	Miscellaneous Transmission Expenses (Major Only)			
56	567	Rents			
57	567.1	Operation Supplies and Expenses (Nonmajor Only)			
58		Total Transmission Operation Expenses			
59	568	Maintenance Supervision and Engineering (Major Only)			
60	569	Maintenance of Structures (Major Only)			
61	569.1	Maintenance of Computer Hardware			
62	569.2	Maintenance of Computer Software			
63	569.3	Maintenance of Communication Equipment			
64	569.4	Maintenance of Miscellaneous Regional Transmission Plant			
65	570	Maintenance of Station Equipment (Major Only)			
66	571	Maintenance of Overhead Lines (Major Only)			
67	572	Maintenance of Underground Lines (Major Only)			
68	573	Maintenance of Miscellaneous Transmission Plant (Major Only)			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Schedule XVI- Analysis of Charges for Service- Associate and Non-Associate Companies (continued)

Line No.	Account Number (a)	Title of Account (b)	Total Charges for Services Direct Cost (i)	Total Charges for Services Indirect Cost (j)	Total Charges for Services Total Cost (k)
69	574	Maintenance of Transmission Plant (Nonmajor Only)			
70		Total Transmission Maintenance Expenses			
71	575.1-575.8	Total Regional Market Operation Expenses			
72	576.1-576.5	Total Regional Market Maintenance Expenses			
72.1	*577.1-577.5*	*Total Energy Storage Operation Expenses*			
72.2	*578.1-578.7*	*Total Energy Storage Maintenance Expenses*			
73	580-589	Total Distribution Operation Expenses			
74	590-598	Total Distribution Maintenance Expenses			
75		Total Electric Operation and Maintenance Expenses			
76	700-798	Production Expenses (Provide selected accounts in a footnote)			
77	800-813	Total Other Gas Supply Operation Expenses			
78	814-826	Total Underground Storage Operation Expenses			
79	830-837	Total Underground Storage Maintenance Expenses			
80	840-842.3	Total Other Storage Operation Expenses			
81	843.1-843.9	Total Other Storage Maintenance Expenses			
82	844.1-846.2	Total Liquefied Natural Gas Terminaling and Processing Operation Expenses			
83	847.1-847.8	Total Liquefied Natural Gas Terminaling and Processing Maintenance Expenses			
84	850	Operation Supervision and Engineering			
85	851	System Control and Load Dispatching.			
86	852	Communication System Expenses			
87	853	Compressor Station Labor and Expenses			
88	854	Gas for Compressor Station Fuel			
89	855	Other Fuel and Power for Compressor Stations			
90	856	Mains Expenses			
91	857	Measuring and Regulating Station Expenses			
92	858	Transmission and Compression of Gas By Others			

93	859	Other Expenses			
94	860	Rents			
95		Total Gas Transmission Operation Expenses			
96	861	Maintenance Supervision and Engineering			
97	862	Maintenance of Structures and Improvements			
98	863	Maintenance of Mains			
99	864	Maintenance of Compressor Station Equipment			
100	865	Maintenance of Measuring And Regulating Station Equipment			
101	866	Maintenance of Communication Equipment			
102	867	Maintenance of Other Equipment			
103		Total Gas Transmission Maintenance Expenses			
104	870-881	Total Distribution Operation Expenses			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Schedule XVI- Analysis of Charges for Service- Associate and Non-Associate Companies (continued)

Line No.	Account Number (a)	Title of Account (b)	Total Charges for Services Direct Cost (i)	Total Charges for Services Indirect Cost (j)	Total Charges for Services Total Cost (k)
105	885-894	Total Distribution Maintenance Expenses			
106		Total Natural Gas Operation and Maintenance Expenses			
107	901	Supervision			
108	902	Meter reading expenses			
109	903	Customer records and collection expenses			
110	904	Uncollectible accounts			
111	905	Miscellaneous customer accounts expenses			
112	906	Total Customer Accounts Operation Expenses			
113	907	Supervision			
114	908	Customer assistance expenses			
115	909	Informational And Instructional Advertising Expenses			
116	910	Miscellaneous Customer Service And Informational Expenses			
117		Total Service and Informational Operation Accounts			
118	911	Supervision			
119	912	Demonstrating and Selling Expenses			
120	913	Advertising Expenses			
121	916	Miscellaneous Sales Expenses			
122		Total Sales Operation Expenses			
123	920	Administrative and General Salaries			
124	921	Office Supplies and Expenses			
125	923	Outside Services Employed			
126	924	Property Insurance			
127	925	Injuries and Damages			
128	926	Employee Pensions and Benefits			
129	928	Regulatory Commission Expenses			
130	930.1	General Advertising Expenses			
131	930.2	Miscellaneous General Expenses			
132	931	Rents			
133		Total Administrative and General Operation Expenses			
134	935	Maintenance of Structures and Equipment			
135	*935.1*	*Maintenance of Computer Hardware*			
136	*935.2*	*Maintenance of Computer Software*			
137	*935.3*	*Maintenance of Communication Equipment*			
138[5]		Total Administrative and General Maintenance Expenses			
139[6]		Total Cost of Service			

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Part III

Office of Management and Budget

2 CFR Parts 1, 25, 175, et al.
Guidance for Grants and Agreements; Proposed Rule

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 1, 25, 175, 180, 182, 183, 184, 200

Guidance for Grants and Agreements

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Proposed rule; notification of proposed guidance.

SUMMARY: The Office of Management and Budget (OMB) is proposing to revise sections of OMB Guidance for Grants and Agreements. This proposed revision reflects comments received from Federal agencies and those received in response to the OMB Notice of Request for Information published in the **Federal Register** in February 2023. In response to Federal agency and public input, OMB is proposing revisions intended in many cases to reduce agency and recipient burden. OMB proposes both policy changes and clarifications to existing guidance including plain language revisions. OMB also proposes to update the guidance to reflect recent OMB priorities related to Federal financial assistance. Finally, OMB is proposing revisions to improve Federal financial assistance management, transparency, and oversight through more accessible and readily comprehensible guidance.

DATES: OMB invites interested persons and organizations to submit comments on or before December 4, 2023.

ADDRESSES: Comments on this proposal must be submitted electronically before the comment closing date to *www.regulations.gov.* In submitting comments, please search for recent submissions by OMB to find docket *OMB–2023–0017,* which includes the full text of the proposed revisions and submit comments there. Please provide clarity as to the section of the guidance that each comment is referencing by beginning each comment with the section number in brackets. *For example; if the comment is on 2 CFR 200.1 include the following before the comment [200.1].* The public comments received by OMB will be posted at *http://www.regulations.gov* and be a matter of public record. Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature. In general, responses to the comments will be summarized and included in the preamble of the final guidance.

FOR FURTHER INFORMATION CONTACT: Andrew Reisig or Steven Mackey at the OMB Office of Federal Financial Management via email at *MBX.OMB.OFFM.Grants@OMB.eop.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

The Office of Management and Budget (OMB) proposes to revise several parts of the OMB Guidance for Grants and Agreements located in title 2 of the Code of Federal Regulations (CFR) to further clarify and update guidance to Federal agencies on the consistent and efficient use of Federal financial assistance. This document includes proposed revisions to Part 1 (About Title 2 of the Code of Federal Regulations and Subtitle A); Part 25 (Universal Identifier and System for Award Management); Part 170 (Reporting Subaward and Executive Compensation Information), Part 175 (Award Term for Trafficking in Persons); Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)); Part 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)); Part 183 (Never Contract with the Enemy); and Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

As explained in further detail below, OMB proposes revising 2 CFR for reasons including: (1) incorporating statutory requirements and administration priorities; (2) reducing agency and recipient burden; (3) clarifying sections that recipients or agencies have interpreted in different ways; and (4) rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms. Consistent with these objectives, OMB proposes both policy changes and clarifications to existing guidance including plain language revisions. OMB also proposes to update the guidance to reflect recent OMB priorities related to Federal financial assistance. Finally, OMB's proposed revisions are also intended to improve Federal financial assistance management, transparency, and oversight through more accessible and readily comprehensible guidance.

OMB summarizes its proposals for policy changes in this document below. OMB also explains its general methodology for plain language revisions. OMB sought to maintain the existing structure of the 2 CFR guidance, which remains generally intact and mostly consistent with earlier iterations of the guidance—for example, in terms of the structure of parts, structure of subparts, and section numbering. Except in cases where OMB proposes policy changes or other edits for consistency with statutory requirements, OMB also generally sought to maintain the existing content of the 2 CFR guidance. In many cases throughout the guidance, however, OMB proposes plain language revisions to simplify the guidance text, avoid or reduce technical jargon where feasible, provide greater consistency, and make the text more succinct.

The proposed revisions align with OMB's authority to: (i) issue guidance promoting consistent and efficient use of Federal financial assistance instruments; and (ii) provide overall direction and leadership to Federal agencies on policies and requirements related to Federal financial assistance. *See* 31 U.S.C. 6307 and 31 U.S.C. 503(a)(2). Additional authorities for the proposed revisions are set forth below. Many of the proposed revisions reflect comments received from Federal agencies and those received from the public in response to the OMB Notice of Request for Information published in the **Federal Register** in February 2023. *See* 88 FR 8480 (Feb. 9, 2023).

Background

Between 2012 and 2013, OMB worked with Federal agencies to revise and streamline existing guidance to develop the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) located in part 200 of 2 CFR. 79 FR 78589 (Dec. 26, 2013). This effort was intended to assist programs in delivering better outcomes on behalf of the American people while simultaneously reducing administrative burden and the risk of fraud, waste, and abuse. The Uniform Guidance in part 200, which OMB established in 2013, consolidated, streamlined, and superseded requirements from several earlier OMB Circulars and guidance documents related to grants management and implementation of the Single Audit Act. OMB explained in 2013 that its guidance intended to improve both the clarity and accessibility of these requirements across the Federal government. Federal award-making agencies implemented the Uniform Guidance through an interim final rule, which became effective on December 26, 2014. 79 FR 75867 (Dec. 19, 2014).

OMB generally reviews the Uniform Guidance every five years in accordance with 2 CFR 200.109. OMB made further revisions to the Uniform Guidance in 2020. 85 FR 49506 (Aug. 13, 2020). The 2020 revisions addressed topics including program development and design, as well as measuring recipient

performance to assist Federal awarding agencies and non-Federal entities to improve program goals and objectives, share lessons learned, and adopt of promising performance practices.

Based on feedback and ongoing engagement with Federal agencies and the broader Federal financial assistance community, OMB believes that additional revisions are now warranted to the Uniform Guidance in part 200 to further streamline, clarify, and update the guidance, including raising certain thresholds, where permissible under law, in recognition of inflation over time. Further information on OMB's objectives for the proposed revisions is provided below.

In addition to proposed revisions in part 200, OMB also proposes revisions to other parts in subtitle A of 2 CFR for similar reasons, including parts 1, 25, 170, 175, 180, 182, and 183. OMB established these parts at different times in the last 20 years. See, for example, 69 FR 26276 (May, 11, 2004) (establishing 2 CFR for guidance on grants and other financial assistance and nonprocurement agreements); 70 FR 51863 (Aug. 31, 2005) (establishing part 180); 75 FR 55671 (Sep. 14, 2010) (establishing part 25); and 75 FR 55663 (Sep. 14, 2010) (establishing part 170).

OMB Objectives

OMB's objectives for the current proposed revisions to several parts of subtitle A of 2 CFR include: (1) incorporating statutory requirements and administration priorities; (2) reducing agency and recipient burden; (3) clarifying sections that recipients or agencies have interpreted in different ways; and (4) rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms.

The proposed revisions to the Uniform Guidance in part 200 and other parts of 2 CFR generally support these four objectives. In support of objective (1), OMB proposes to implement changes throughout the Uniform Guidance and other parts to ensure consistency with statutory authorities. For example, OMB proposes to revise Parts 25, 170, and 175 to ensure its guidance properly aligns with underlying statutes, as amended. These potential revisions would reduce inconsistencies between OMB's guidance and authorizing statutes to ensure proper implementation. OMB has also made several structural changes to individual parts within Chapter I to provide further structural consistency throughout OMB's guidance in 2 CFR.

In support of objective (2), OMB proposes to increase several monetary thresholds that have not been updated for many years. For example, OMB proposes increasing the single audit threshold from $750,000 to $1,000,000 and increasing the threshold from $5,000 to $10,000 for determining items that are considered to be equipment. OMB reviewed previous increases to the thresholds and considered current economic data when making its determinations. In further support of reducing burden, OMB is proposing a complete revision to the template text for a Notice of Funding Opportunity (NOFO) located in Appendix I of the Uniform Guidance in part 200. With this revision, OMB intends to reduce administrative burden and unnecessary obstacles for applying to Federal financial assistance.

In support of objective (3), OMB proposes revisions to 2 CFR to clarify areas of misinterpretation. Many of these clarifications do not represent a change in policy but serve to explain the intent of specific sections of the Uniform Guidance in part 200, and other parts in 2 CFR, with greater precision and clarity. OMB received feedback from Federal agencies and the public stating that Federal agencies and the recipient community interpret many sections differently. As one example, OMB clarifies that Federal agencies approve costs requiring prior approval when the Federal award is issued if the costs were included in the recipient's proposal, and do not require subsequent approval prior to expenditure.

In support of objective (4), OMB proposes to revise the guidance to follow plain language principles. Plain language principles OMB focused on included using simple words and phrases, avoiding jargon, using terms consistently, and being concise.

Related to OMB's plain language revisions, throughout subparts A to E of part 200, OMB proposes to use the terms ''recipient,'' ''subrecipient,'' or both in place of ''non-Federal entity.'' OMB believes that the existing usage of ''non-Federal entity'' in subparts A through E of the existing CFR text in part 200 presents challenges to readers and makes it difficult to quickly understand what entity is being addressed, especially in situations in which Federal agencies apply part 200 to Federal agencies, for-profit organizations, foreign public entities, or foreign organizations under 2 CFR 200.101. In the revisions to part 200, OMB uses the term ''non-Federal entity,'' as defined in section 200.1, only when that entity is specifically intended, such as in subpart F implementing the Single Audit Act. In many cases in part 200 OMB proposes to replace ''non-Federal entity'' with either ''recipient and subrecipient'' or ''recipient or subrecipient.'' In cases where the guidance in part 200 relates specifically to only either ''recipients'' or ''subrecipients,'' but not both, OMB refers specifically to the applicable entity. OMB invites comments on this proposal and any effects it may have on specific sections or paragraphs of the guidance in part 200.

OMB notes that these revisions related to the use of the terms ''non-Federal entity,'' ''recipient,'' and ''subrecipient'' do not directly change the existing scope of applicability of the guidance. The applicability provision for part 200 at section 200.101, continues to provide Federal agencies with discretion on whether to apply subparts A through E of part 200 to Federal agencies, for-profit entities, foreign public entities, or foreign organizations. In the same section, OMB proposes to encourage Federal agencies to apply the requirements in subparts A to E of part 200 to all recipients in a consistent and equitable manner, but does not require them to do so. In cases in which Federal agencies apply part 200 to such entities, OMB's proposal further clarifies how the guidance applies to those entities as either recipients or subrecipients.

As another example of plain language revisions, OMB proposes to replace the use of the general term ''OMB designated governmentwide systems'' with more specific terms to reduce ambiguity for those unfamiliar with the Uniform Guidance. In this proposed revisions OMB specifically mentions the appropriate system, such as *SAM.gov, USASpending.gov,* the Contractor Performance Assessment Reporting System (CPARS), or *Grants.gov*.

The overall goal of OMB's plain language revision effort is to make the Uniform Guidance more accessible to the general public and ensure more equitable access to Federal funding opportunities by making the guidance on that topic easier to understand. OMB does not directly address the proposed plain language revisions in this preamble unless a revision represents a material change to the Uniform Guidance. However, OMB invites comment on whether any of its plain language revisions in part 200, or other parts, may have unintended consequences. OMB also invites comments on whether further modifications or additional precision is needed in any specific instance, such as in the case of OMB's proposed use of the terms ''recipient,'' ''subrecipient,'' or both in particular sections of the guidance.

Statutory Authority for OMB Guidance for Grants and Agreements

The Director of OMB is authorized under 31 U.S.C. 6307 to ''issue supplementary interpretative guidelines to promote consistent and efficient use of . . . grant agreements . . . and cooperative agreements.'' The Deputy Director for Management of OMB is authorized under 31 U.S.C. 503 to, among other things, provide ''overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements.'' 31 U.S.C. 503(a)(2).

OMB also relies on authorities including the Single Audit Act Amendments of 1996 (Pub. L. 104–156, as amended, codified at 31 U.S.C. 7501–7507); the Federal Funding Accountability and Transparency Act of 2006 (FFATA or the Transparency Act) (Pub. L. 109–282), as amended; the Digital Accountability and Transparency Act of 2014 (DATA Act of 2014) (Pub. L. 113–101), as amended; the Federal Program Information Act (Pub. L. 95–220 and Pub. L. 98–169, as amended, codified at 31 U.S.C. 6101–6106); the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224, as amended, codified at 31 U.S.C. 6301–6309); the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 1101–1131); the Budget and Accounting Procedures Act of 1950, as amended (codified at 31 U.S.C. 1101–1126); the Chief Financial Officers Act of 1990 (codified at 31 U.S.C. 503–504); the Trafficking Victims Protection Act of 2000 (TVPA), as amended (codified at 22 U.S.C. 7101–7115); and Executive Order 11541, ''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.''

Request for Information Issued by OMB in February 2023

On February 9, 2023, OMB published a Notice of Request for Information (RFI) in the **Federal Register**. 88 FR 8480 (Feb. 9, 2023). OMB received approximately 1,250 individual comments from all sources, including 113 submissions from the public containing multiple comments in each. In response to Federal agency and public input, OMB is proposing the revisions discussed below.

Part-by-Part Discussion of the Proposed Revisions

OMB invites comments on the proposed revisions throughout subtitle A of 2 CFR. OMB identifies areas below where comments may be particularly useful.

Part 1—About Title 2 of the Code of Federal Regulations and Subtitle A

OMB proposes to revise the headings of title of 2 CFR and Subtitle A and Chapter I to replace ''Grants and Agreements'' with ''Federal Financial Assistance.'' This revision will help to ensure that the Uniform Guidance is understood to be applicable beyond just grants and cooperative agreements, unless noted differently in the applicability provision for the Uniform Guidance at section 200.101 or relevant provisions in others parts in chapter I.

OMB proposes to revise section 1.200 to remove paragraphs (b) and (c), which are no longer accurate. When OMB first established part 1 in 2004, see 69 FR 26276 (May 11, 2004), it implemented the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). That legislation ceased to be effective on November 20, 2007 based on a sunset date included in the law. In addition, chapter II of subtitle A in 2 CFR, which now contains part 200, was initially intended to contain OMB guidance in its ''initial form'' before it was ''finalized.'' That statement no longer accurately reflects the structure of subtitle A of 2 CFR nor status of the OMB guidance in part 200.

OMB proposes to provide a more succinct statement in section 1.215 explaining that some of the guidance was organized differently within previous OMB circulars or other guidance documents before establishment of title 2 of the CFR. Because 2 CFR has now existed for almost 20 years in its current format and location, OMB does not believe it is necessary to continue to include the table showing earlier sources of certain elements of the OMB guidance in 2 CFR. The **Federal Register** notice establishing 2 CFR in 2004, see 69 FR 26276 (May, 11, 2004), and other subsequent **Federal Register** notices establishing and revising particular parts and provisions of subtitle A in 2 CFR, include that information.

OMB also proposes to revise section 1.305 to further clarify Federal agency responsibilities, such as coordinating with the Council on Federal Financial Assistance (see OMB Memorandum M–23–19), the Grants Quality Service Management Office (QSMO), and other governance committees.

OMB also proposes to add section 1.231 to clarify its intent that if any provision of this guidance, as finalized, were held to be invalid or unenforceable, such provision, or combination of provisions, are severable from the remaining provisions of the guidance, as finalized.

Part 25—Unique Entity Identifier and System for Award Management

OMB proposes to revise the guidance in this part to ensure it properly aligns with the authorizing statutes, as amended, including the Transparency Act and the DATA Act of 2014. OMB first revises the title of Part 25 to replace ''universal identifier'' with ''unique entity identifier.'' In section 25.105, which is renamed ''Applicability,'' OMB proposes to clarify that the requirement to obtain a Unique Entity Identifier (UEI) and register in *SAM.gov* does not apply to second-tier subrecipients or contractors. In support of Federal agency requests, OMB proposes to clarify that recipients of loan guarantees must obtain a UEI and register in *SAM.gov*, while a Federal agency may use discretion when determining to apply the requirements to beneficiary borrowers.

In section 25.110, OMB proposes to clarify that, even if an exception is granted, a Federal agency remains responsible for reporting data to comply with the Transparency Act, as amended, except that it may use a generic entity identifier in the circumstances described.

Although not included in the proposed guidance in this document, OMB is also considering other ways of reducing the administrative burden associated with obtaining a UEI and registering in *SAM.gov* for foreign organizations or foreign public entity receiving Federal awards between $25,000 (the Transparency Act threshold for a ''Federal award'') and $250,000 (the simplified acquisition threshold). Federal agencies have explained to OMB that the process for obtaining a UEI and registering in *SAM.gov* can present significant challenges for some of their applicants for, and recipients of, awards in this limited category. Based on this feedback, OMB is considering establishing a new exception in section 25.110 that would allow an agency to grant a one-time exception from the requirement to obtain a UEI, register in *SAM.gov*, or both for foreign organizations or foreign public entities applying for or receiving an award between $25,000 and $250,000 for a project or program performed outside the U.S. OMB will work with Federal agency partners to determine if this proposal can be implemented in a way that is consistent with Transparency Act reporting requirements. If included in the final revisions to the guidance, OMB will also consider incorporating further

limits or safeguards in this exception to mitigate risk, such as not allowing its application to awards that will include subawards above $30,000—the threshold for subaward reporting established based on the pilot program in section 5(b) of the Transparency Act, as amended by the Data Act of 2014. Public Law 113–101; 85 FR 49506 (Aug. 13, 2020); 2 CFR 170.220. This proposed change would provide more flexibility—as needed—to agencies operating in overseas environments where *SAM.gov* registration presents particular challenges. If finalized, the exception would only be available on a case-by-case basis in situations in which the agency has conducted a risk-based analysis and deemed it impractical for the entity to comply with the requirements(s). This proposed change would only be finalized in a way that would allow agencies to continue following Transparency Act reporting requirements for this limited category of awards.

Related to the above analysis, OMB is also considering expanding the exigent circumstances exception in section 25.110 to provide recipients with additional time to obtain a UEI and complete *SAM.gov* registration if exigent circumstances persist beyond 30 days. This proposal is not included in the proposed guidance in this document, but OMB is considering ways to provide this additional flexibility in the final guidance. When exigent circumstances exist, the current guidance at section 25.110 allows agencies to provide recipients up to 30 days after the Federal award date to obtain a UEI and complete *SAM.gov* registration. In recognition of the issues that sometimes arise when organizations attempt to register in *SAM.gov*, particularly for new or inexperienced applicants, OMB's proposal would provide Federal agencies with the option to provide recipients an additional 90 days if exigent circumstances persist. OMB will work with Federal agency partners to determine if this proposal can be implemented in a way that is consistent with Transparency Act reporting requirements. If included in the final revisions to the guidance, OMB proposes to further clarify that Federal agencies should not issue payments to a recipient that is unable to obtain a UEI or complete registration in *SAM.gov*. OMB also proposes to clarify that Federal agencies should include an award term expressly providing that the recipient's eligibility to receive any future payments under the award (such as outlays of cash) would be contingent on the recipient receiving a UEI and completing registration. Again, this proposed change would only be finalized in a way that would allow agencies to continue following Transparency Act reporting requirements for this limited category of awards.

OMB also proposes several clarifications in the part, such as a proposed revision in section 25.205 explaining that the requirement to have an active UEI does not apply to amendments to terminate or close a Federal award.

Part 170—Reporting Subaward and Executive Compensation Information

OMB proposes to revise the guidance in this part to ensure it properly aligns with the authorizing statutes, as amended, including the Transparency Act and the DATA Act of 2014. OMB proposes to clarify the specific Federal agency reporting requirements and to revise the award term to resolve issues related to which entities the award term applies to. OMB also proposes to revise certain sections to clarify their intended meaning. For example, OMB proposes to move certain requirements currently contained in section 170.110 to section 170.105, which OMB proposes to rename ''Applicability.''

Part 175—Award Term for Trafficking in Persons

OMB proposes to revise the guidance in part 175 to ensure it properly aligns with the authorizing statutes that have been amended since it was published. See the TVPA of 2000, as codified at 22 U.S.C. 7101 to 7115. OMB proposes to update the policy and Award Term to ensure alignment with the current statute and to further align with the format of the CFR. For example, at section 175.105, OMB proposes adding provisions related to a compliance plan and requiring notification to Inspectors Generals under certain circumstances to further align with statute.

Part 180—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement)

OMB proposes minimal revisions to this part based on feedback received from the Interagency Suspension and Debarment Committee (ISDC) in accordance with section 180.40. Considering the role of the ISDC in recommending changes, OMB does not propose extensive plain language revisions through this document in part 180. Sections in part 180 that OMB proposes to revise include sections 180.635 and 180.640 to clarify available administrative actions in lieu of debarment. OMB proposes amending section 180.705 to include ''other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits'' for officials to consider before initiating a suspension. OMB proposes additional clarifying edits to sections 180.710, 180.815, and 180.860, including adding text to section 180.860 to address factors influencing a debarment decision; this revision proposes to add text on ''whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.'' OMB proposes changes to this part generally in response to an ISDC recommendation to provide additional clarifications to 2 CFR to reflect current practice. OMB is not proposing to establish new policy in part 180 that would negatively impact the ability of Federal agencies or recipients to adhere to this guidance.

Part 182—Government-Wide Requirements for Drug-Free Workplace (Financial Assistance)

OMB proposes limited plain language revisions to this part.

Part 183—Never Contract With The Enemy

OMB proposes limited plain language revisions to this part.

Part 184—Buy America Preferences for Infrastructure Projects

OMB established this part on Buy America preferences for infrastructure projects through a separate process. 88 FR 57750 (Aug. 23, 2023). OMB does not propose changes to part 184 through this document. OMB notes, however, that it may potentially make minor, non-substantive changes to part 184 through its final guidance if necessary to ensure consistency with any changes to the definitions in section 200.1. OMB notes that part 184, at section 184.3, states that acronyms and terms not defined in part 184 have the same meaning as provided in section 200.1. Certain terms used in part 184, such as ''Federal awarding agency,'' may be affected by OMB's proposed changes under this notice. Thus, it may be necessary to make minor conforming changes to part 184 to ensure consistent use of terms.

Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

In the paragraphs below, OMB discusses proposed changes to each subpart of the Uniform Guidance in 2 CFR part 200.

Subpart A—Acronyms and Definitions

OMB proposes to update section 200.0 to remove acronyms that either appear only once or are used infrequently in the Uniform Guidance. At the same time, OMB proposes to add several acronyms that are used more frequently, but have been omitted from this section in past updates, such as Unique Entity Identifier (UEI).

In section 200.1, OMB proposes to remove several definitions that were used only once or on a limited basis and instead move such definitions to the appropriate section of the Uniform Guidance where they appear. OMB proposes this change to ease the experience of the reader and avoid the need to review Subpart A for an understanding of a single section or small set of sections. For example, OMB proposes moving the definition of ''Cooperative audit resolution'' to the text of Subpart F. OMB also proposes deleting the definition of ''Federal awarding agency,'' which OMB now proposes to incorporate within the definition of ''Federal agency.''

OMB also proposes adding several new definitions of commonly used terms based on feedback from agencies and the RFI. Proposed new definitions include ''continuation funding,'' ''for-profit organization,'' ''key personnel,'' ''participant,'' and ''prior approval.''

OMB proposes to revise several definitions to incorporate threshold increases referenced in other sections, such as the threshold increase for ''equipment'' to $10,000, the threshold for ''supply'' to $10,000, and the definition of ''Modified Total Direct Costs,'' which now proposes to exclude subaward costs above $50,000, as compared to $25,000 in the existing guidance.

OMB also proposes to revise several definitions for other reasons. For example, OMB proposes to shorten the definition of ''improper payment'' to ensure that the definition references the appropriate source in Appendix C to OMB Circular A–123, Requirements for Payment Integrity Improvement. OMB proposes to update the definition of ''intangible property'' to include more information related to date and licenses. OMB also proposes to clarify ''participant support costs'' with additional explanatory information and expand the definition of ''questioned costs'' to provide greater understanding of the terms throughout the Uniform Guidance. In addition, other definitions that OMB proposes altering include ''cost sharing'' (discussed below under section 200.306), ''Federal agency,'' ''Federal award date,'' ''financial obligations,'' ''Indian tribe,'' ''period of performance,'' ''prior approval,'' ''real property'', ''recipient,'' ''special purpose equipment,'' ''subaward,'' and ''termination.''

OMB also proposes a minor change to the definition of the term ''Federal financial assistance.'' OMB proposes the term to include assistance received or administered by ''recipients or subrecipients''—as compared to assistance received or administered by ''non-Federal entities'' in the existing guidance. In cases in which Federal agencies apply subparts A through E of part 200 to for-profit organizations, use of the terms ''recipients or subrecipients'' in this definition may provide further clarity on the applicability of the Build America, Buy America Act (BABA) (Pub. L. 117–58, 135 Stat. 429, 70901–70927, Nov. 15, 2021) to Federal awards made by that agency to for-profit organizations. Section 70912(4) of BABA incorporates the definition of Federal financial assistance from 2 CFR 200.1 or successor regulations. For additional information on BABA and OMB's guidance in 2 CFR part 184, see 88 FR 55750 (Aug. 23, 2023). OMB does not, however, propose to materially change the sentence in the applicability section at 200.101(a)(2) providing Federal agencies with discretion on whether to apply the guidance to for-profit organizations.

Subpart B—General Provisions

OMB proposes to revise this subpart, in section 200.101, to clarify the applicability of the Uniform Guidance. In OMB's proposal, all subparts of part 200 continue to apply to Federal agencies that make Federal awards to ''non-Federal entities.'' Federal agencies also retain discretion on whether to apply subparts A through E of part 200 to Federal agencies, for-profit entities, foreign public entities, or foreign organizations—which are not included in the definition of the term ''non-Federal entity.'' OMB proposes to add language encouraging agencies to apply the requirements in subparts A through E of part 200 to all recipients in a consistent and equitable manner to the extent permitted within applicable statutes, regulations, and policies.

In support of plain language principles, OMB proposes to convert the applicability table in paragraph (b) of section 200.101 into paragraph form.

OMB proposes multiple clarifying revisions in section 200.102 to improve agency and recipient understanding of the availability and use of exceptions to, or deviations from, OMB's Uniform Guidance in part 200.

In section 200.104, OMB proposes to provide a more succinct statement that part 200 supersedes previous OMB guidance issued in 2 CFR on topics including cost principles and audits for Federal financial assistance. Because part 200 has now existed for 10 years in its current format and location, OMB does not believe it is necessary to continue to include the detailed list identifying elements of the Uniform Guidance in part 200 previously contained in OMB Circulars or other parts of 2 CFR, subtitle A, chapter II.

In section 200.111 OMB proposes new guidance to permit Federal agencies to request, receive, and distribute Federal award information in a language other than English when it is appropriate for a specific program or Federal award. This proposal would allow for more flexibility when working in international environments or in communities where English is the not the primary language.

Finally, based on feedback from the oversight community, OMB proposes to revise the section on mandatory disclosure to clarify that recipients and subrecipients must promptly disclose any credible evidence of a violation of Federal criminal law potentially affecting the Federal award. OMB also proposes to revise this section to require recipients and subrecipients to provide written disclosure to the agency's Office of Inspector General. OMB believes the proposed ''credible evidence'' standard is more appropriate because it would not require recipients, subrecipients, and applicants to make a legal determination that a criminal law has been violated before they are required to make a disclosure of ''credible evidence'' of such a violation to the Federal agency, pass-through entity (if applicable), and the agency's Office of Inspector General.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

OMB proposes to revise this subpart to clarify certain requirements for fixed amount awards. For example, OMB proposes to clarify in section 200.201 that recipients are entitled to any unexpended funds under a fixed amount award if the required activities were completed in accordance with the terms and conditions of the award. In the same section, OMB also proposes to clarify record retention and post award certification requirements. In addition—although no specific language is proposed in this document—OMB is considering requiring additional pre-award certifications for fixed amount awards to address the potential

increased risk of fraud under fixed amount awards. OMB invites comments on appropriate pre-award certifications for fixed amount awards and notes that it may include a requirement for such certifications in the final guidance document. OMB also proposes to more specifically identify certain prior approval requirements that specifically relate to fixed amount awards.

OMB also proposes to expand section 200.202 on program planning and design to encourage agencies to encourage recipients to engage members of the community that will benefit from or be impacted by a Federal financial assistance program. OMB also proposes to encourage Federal agencies to develop programs in consultation with the communities that will benefit from or be impacted by a program. In section 200.202, OMB also proposes to underscore that Federal agencies should consider all available data and evaluation results from past programs and coordinate with other agencies during program planning and design.

OMB proposes to revise section 200.203 on Assistance Listings to reinforce the importance of communicating in plain language and highlighting any program-related customer service initiatives.

OMB proposes to revise section 200.204 on notices of funding opportunities in a number of ways to encourage Federal agencies to focus more on communicating requirements to the public in an accessible and comprehensible manner. For example, OMB proposes to include an Executive Summary requirement and to encourage agencies to use plain language when publishing opportunities. OMB also proposes that agencies should communicate program requirements specifically and clearly, as well as limit the length of program announcements. As noted in the proposed changes to the guidance, this is particularly important in consideration of applicants with less experience applying for Federal financial assistance, such as applicants from underserved communities. OMB also proposes to encourage Federal agencies to identify all eligible applicants in the funding opportunity—for example, by providing greater specificity on different types of nonprofit organizations such as labor unions. In proposing these revisions, OMB aims to make notices of funding opportunities more consistent and transparent. OMB also aims to ensure that applicants are not unintentionally excluded from funding opportunities.

OMB also proposes additional changes in section 200.204, such as encouraging agencies to provide an anticipated award date and providing additional clarifying guidance on the availability period for funding opportunities.

In section 200.205 OMB proposes to clarify that a Federal agency should consider diversity when developing policies and procedures for merit review panels.

In section 200.206 OMB proposes to revise the section regarding risk evaluation by using the term risk assessment as a standard term and clarifying agency requirements to appropriately review eligibility qualifications and financial integrity information. OMB also proposes to clarify that agency processes may consider any risk criteria pertinent to a program, such as cybersecurity risk or impacts on local jobs and the community. OMB further proposes to clarify that an agency may modify its risk assessment at any time during the lifecycle of an award.

OMB also proposes to clarify in section 200.209 that those entities who are exempt from the requirements of 2 CFR part 25 must still complete the certifications and representations by submitting the appropriate assurance form.

OMB also proposes to include several additions to section 200.216 on the prohibition of certain telecommunications and video surveillance services or equipment to expand the guidance by incorporating additional information from OMB's Frequently Asked Questions document.

Lastly, OMB proposes to include a new section 200.217 to expand on the whistleblower protections and requirements for recipients of Federal financial assistance, which had previously been referenced in section 200.300.

Subpart D—Post Federal Award Requirements

OMB proposes to retain the guidance in section 200.300 on statutory and national policy requirements, which explains the need to administer Federal awards in full accordance with the U.S. Constitution, applicable Federal statutes and regulations, and requirements of part 200. OMB proposes to streamline section 200.300 and to reinforce existing nondiscrimination requirements under the Constitution and other applicable law, consistent with Executive Order 13988 of January 20, 2021 (''Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation''), and Executive Order 14075 of June 15, 2022 (''Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals'').

In section 200.305 on Federal payment, OMB proposes to provide additional flexibilities for recipients when interest bearing accounts are not accessible in a foreign country; and to provide a specific link for returning funds to the Payment Management System, rather than including the more extensive instructions in the guidance itself.

OMB proposes to revise section 200.306 on cost sharing, as well as the definition of cost sharing itself, to clarify that ''matching'' is one category of cost sharing overall—thus eliminating the need to repeat the term ''matching'' throughout. In the same section, OMB also proposes to provide additional guidance on voluntary uncommitted cost sharing for institutes of higher education.

OMB proposes to revise section 200.307 on program income by providing clarifications in paragraph (a) regarding use and expenditure of program income, including allowing program income for certain closeout costs. OMB also proposes to revise and provide further clarifying guidance in paragraph (b) for each of the three methods for use of program income.

OMB proposes changes to section 200.308 on revision of budget and program plans by combining the requirements for construction and non-construction awards to provide greater uniformity in the requirements for all award types. OMB proposes to clarify that recipients do not need approval of individual subrecipients under all circumstances, but only when making subawards of programmatic activities not proposed by the recipient in the application for an award. A Federal agency may also require prior approval of subrecipients through the terms and conditions of a Federal award. OMB proposes to further clarify that agencies should not require approval of a change in a proposed subrecipient unless the initial inclusion of a subrecipient was a determining factor in the agency's merit review process. This change is proposed to reinforce the role of the recipient as responsible for the efficient and effective administration of the Federal award including the selection of a qualified and capable subrecipient. OMB also proposes to identify other items requiring prior approval, including requesting additional funds, transferring funds, and no-cost extensions. OMB proposes to clarify that no-cost extensions are different from one-time extensions, which an agency is permitted to authorize a recipient to do without prior approval.

In section 200.309 on modification to the period of performance, OMB proposes to provide additional clarification that when an agency decides not to continue an award with multiple budget periods, the period of performance should be amended to end at the completion of the currently authorized budget period. OMB also proposes to incorporate the definition of ''renewal award'' in this section.

In section 200.311, addressing real property, OMB proposes to include a new paragraph on appraisals to introduce additional guidance on standards for conducting independent appraisals consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) except as provided in the implementing regulations at 49 CFR part 24, ''Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.'' OMB also proposes to include a definition of the term ''encumbrance'' in sections 200.311, 200.313, and 200.315.

In section 200.313, relating to equipment, OMB proposes to increase the threshold value for equipment from $5,000 to $10,000 and to provide additional guidance on the meaning of a ''conditional title.'' Consistent with proposals in sections 200.311 and 200.315, OMB also proposes a definition of the term ''encumbrance.'' Consistent with the existing requirements for States, OMB also proposes to allow Indian Tribe to dispose of equipment in accordance with tribal law. OMB also proposes to clarify that agencies may permit the recipient to retain equipment with no further obligation to the Federal government when it is not prohibited by Federal statue or regulation. OMB also proposes to reinforce the responsibility of recipients to maintain updated records regarding equipment.

OMB proposes to revise section 200.314 on supplies to raise the threshold from $5,000 to $10,000. OMB also proposes to clarify that the requirements for unused supplies apply to the aggregate value of all supply types, and not just like-item supplies. OMB also proposes to include a definition of ''unused supplies'' in section 200.314.

In section 200.315 on intangible property, OMB proposes to reinforce the potential requirement for recipients and subrecipients to make intangible property publicly available on agency-designated websites. Consistent with proposals in sections 200.311 and 200.313, OMB also proposes a definition of the term ''encumbrance.''

OMB proposes several revisions to the procurement standards in the Uniform Guidance. In recognition of Tribal sovereignty, and consistent with the existing requirements for States, in section 200.317 OMB proposes to allow Indian tribes to follow their own policies and procedures.

OMB also proposes to revise the procurement standards in section 200.318. These proposed revisions include providing additional guidance that contractors appropriately classify employees consistent with the Fair Labor Standards Act. See the Fair Labor Standards Act at 29 U.S.C. chapter 8.

OMB also proposes adding a new paragraph (l) in section 200.318 to clarify that that the procurement standards in part 200 do not prohibit recipients or subrecipients from using Project Labor Agreements or similar forms of pre-hire collective bargaining agreements; requiring commitments or goals to hire people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative OMB Memorandum M–21–28, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located, consistent with the policies and procedures of the recipient or subrecipient, provided that a recipient or subrecipient may not prohibit interstate hiring; requiring commitments or goals to individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 13985; using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or offering employees of a predecessor contractor rights of first refusal under a new contract. The proposed paragraph explains that Federal agencies may consider allowing recipients or subrecipients to use such practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the Federal financial assistance program, and other requirements of part 200. For example, any hiring preference for a class or groups of persons would be permissible only to the extent that it is consistent with the equal protection requirement of the U.S. Constitution.

In section 200.319, OMB proposes to remove the prohibition in the Uniform Guidance on using geographic preference requirements. In the same section, OMB also proposes to state that subpart D does not prohibit recipients and subrecipients from incorporating a scoring mechanism that rewards bidders committing to specific numbers and types of U.S. jobs, as well as certain compensation and benefits. OMB cautions, however, that any geographic preferences or scoring mechanisms must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award. OMB also proposes to clarify that any such scoring mechanism must be consistent with established practices and legal requirements applicable to the recipient or subrecipient.

In section 200.320 on procurement methods, OMB proposes to change ''small purchases'' to ''simplified acquisitions'' to further align with standard terminology. In paragraph (a), OMB proposes to clarify that ''micro-purchases'' and ''simplified acquisitions'' are types of ''informal procurement methods for small purchases.'' OMB also proposes to remove the requirements that local and tribal governments must open sealed bids in public; this requirement may be inconsistent with State or tribal policies and procedures.

In section 200.321, OMB proposes to add ''veteran-owned business'' to the types of businesses that recipients and subrecipients are encouraged to consider for procurement contracts under a Federal award.

OMB proposes to add a new paragraph (b) in section 200.323. Executive Order 14057 of December 8, 2021 (''Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability'') establishes that it is the policy of this Administration to lead by example and pursue a whole-of-government approach on sustainability and expanding American technologies, industries, and jobs that support sustainability and climate resilience. The Executive Order tasks the Federal government with pursuing new strategies to improve the Nation's preparedness and resilience to the effects of a changing climate, including financial management strategies. In support of this policy, OMB proposes to add a new paragraph (b) in section 200.323 encouraging Federal award recipients, to the extent permitted by law, to purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

OMB proposes to add additional language to section 200.324 on contract cost and price to establish that the

recipient or subrecipient may consider potential workforce impacts in their procurement analysis if the procurement transaction will potentially displace public sector employees. OMB also seeks comment on its proposal to delete the existing paragraph (b) in 2 CFR 200.324, requiring the recipient to negotiate profit as a separate element of the price for each contract in which there is no price competition.

In section 200.328, OMB proposes to provide additional clarity on required deadlines for financial reporting to align with progress reporting requirements.

In section 200.329, OMB proposes to revise the reporting of program performance section to remind agencies of the importance of not requiring information in programmatic reports that is not necessary for the effective monitoring of the award. OMB also proposes additional language that emphasizes the importance of measuring customer experience as well as considering evaluation plans when outlining reporting requirements. OMB further proposes to clarify that programmatic reporting may not be required more frequently than quarterly unless specific conditions have been applied to the award in accordance with section 200.208.

In section 200.331 on subrecipient and contractor determinations, OMB proposes additional language to emphasize that Federal agencies do not have a direct legal relationship with subrecipients and contractors of pass-through entities. OMB also proposes to clarify that the characteristics indicative of a subrecipient or contractor determination are not limited to the sample characteristics currently provided in the guidance.

Based on feedback from the Federal financial assistance community, OMB proposes to include in section 200.332 the requirement for pass-through entities to confirm that potential subrecipients are not suspended, debarred, or otherwise excluded from receiving Federal funds.

In section 200.333, OMB proposes removing the current Simplified Acquisition Threshold limit for fixed amount subawards to provide agencies and recipients with increased flexibility in making programmatic and budgetary decisions, while still allowing recipients to establish their own award-specific thresholds with the prior written approval of the Federal agency. Under the proposed revision, a recipient's use of fixed amount subawards remains subject to the prior written approval of the Federal agency.

OMB also proposes to revise and clarify the guidance pertaining to termination and closeout requirements in sections 200.340 through 200.344. On termination, in section 200.340 OMB proposes to remove language that allows a Federal agency or pass-through entity to terminate an award ''if an award no longer effectuates the program goals or agency priorities.'' This revision is proposed only for the purpose of clarifying the guidance; the proposed guidance still allows agencies to terminate a Federal award according to the terms and condition of the award. OMB also proposes to clarify that a termination does not include a Federal agency's decision to not provide continuation funding. In section 200.341, OMB also proposes to clarify requirements that must be included in a notice of termination.

In section 200.344 on closeout, OMB proposes to revise closeout guidance to clarify that recipients must still submit a final financial report even when the recipient does not have a final indirect cost rate; and proposes to clarify that an additional final report must be submitted when the indirect cost rate is finalized. In the same section, OMB also proposes to provide additional flexibilities for agencies and recipients to closeout Federal awards in a timely manner. OMB proposes to allow an agency and recipient to mutually agree upon a final indirect cost rate for an individual award. This proposed revision is not intended to grant agencies additional authorities to negotiate rates over cognizant agencies for indirect rates; rather, it simply proposes to affirm the Federal agency's right to negotiate with the recipient or subrecipient on a case-by-case basis with the goal of closing out specific awards in a timely manner.

Subpart E—Cost Principles

In section 200.401 on applicability, OMB proposes to clarify that the cost principles in subpart E do not apply to grants and cooperative agreements for food commodities.

In section 200.403, OMB proposes to add language clarifying when allowable administrative closeout costs may be incurred in paragraph (h).

In section 200.407, OMB has removed ten items from the prior written approval requirements to reduce Federal agency and recipient burden. These proposed revisions include no longer requiring prior written approval for such items as, real property, equipment, direct costs, entertainment costs, exchange rates, memberships, participant support costs, selling and marketing costs, and taxes. In this section, OMB also proposes to remove the reference to requiring prior written approval for use of grants agreements, cooperative agreements, and contracts, but other requirements throughout the Uniform Guidance in part 200 would continue to apply to use of these instruments.

In section 200.414, OMB proposes to revise several aspects of the guidance pertaining to indirect costs. OMB proposes to clarify that recipients and subrecipients may notify OMB of any disputes with regards to a Federal agency's application or acceptance of a federally negotiated indirect cost rates. OMB also proposes to revise the guidance to clarify that pass-through entities must accept all federally negotiated indirect cost rates for subrecipients.

In the same section, in response to feedback from the Federal financial assistance community, OMB proposes to raise the *de minimis* rate from 10 percent to 15 percent. This change would allow for a more reasonable and realistic recovery of indirect costs, particularly for new or inexperienced organizations that may not have the capacity to undergo a formal rate negotiation, but still deserve to be fully compensated for their overhead costs. The proposed changes still allow recipients and subrecipients to apply a rate lower than 15 percent at their own discretion. At the same time, the proposed guidance clarifies that Federal agencies may not compel recipients and subrecipients to use an indirect rate lower than the proposed 15 percent rate, unless required by statute. OMB also proposes to clarify that the *de minimis* rate may not be applied to cost reimbursement contracts and recipients and subrecipients are not required to use the *de minimis* rate.

Finally, OMB also proposes to remove the existing requirement in paragraph (h) of section 200.414 for all indirect cost rates to be publicly available on a government-wide website—but this may be revisited when applicable systems are updated to allow for the posting of indirect cost rates. OMB seeks comments that include analysis on the advantages and disadvantages of raising the *de minimis* rate in the way proposed.

Based on feedback from the oversight community, in section 200.415 OMB proposes to require subrecipients to certify to pass-through entities that financial information submitted to the pass-through entity is complete and accurate.

Based on feedback from both Institutions of Higher Education (IHE) and Federal agencies, OMB also proposes to remove the requirement in section 200.419 for an IHE that receives

an aggregate total $50 million or more in Federal awards and instruments subject to subpart E to submit a disclosure statement form (DS–2) containing information on cost accounting standards. This proposed change, if finalized, would likely reduce Federal agency and recipient burden. OMB received a comment indicating that the DS–2 is outdated, not needed for ensuring compliance with statutory authorities related to Federal financial assistance, and not universally implemented across the IHE community. The commenter also indicated that the DS–2 is not used as regular tool by the audit or oversight community to enhance compliance or oversight. This commenter also stated that information contained in the DS–2 is readily available in numerous policy portals at research universities and creates unnecessary administrative and cost burden to research universities and Federal agencies.

If finalized, this proposed change would not impact the requirement for IHEs receiving Federal awards above the threshold to comply with the Cost Accounting Standards Board's cost accounting standards. It would only no longer require use of the DS–2 form. This proposed change also is not intended to impact any FAR-based requirements related to disclosure of cost accounting practices.

OMB seeks comments on the potential impact of this proposed change to section 200.419, including analysis on the advantages and disadvantages of removing the requirement for use of the DS–2 form. For example, are there any advantages in retaining consistency and uniformity in accounting practices followed by educational institutions for both contracts under the FAR and Federal financial assistance under part 200, which are achieved through use of the DS–2? For additional background, see, for example, 58 FR 39996, at 39997 (Jul. 26, 1993) (explaining OMB's initial plans to expand the Cost Accounting Standards Board's regulations and standards for educational institutions to Federal grants). Does the requirement to use the DS–2 at section 200.419 help ensure that each IHE's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs or serve other functions? See 48 CFR 9905.501–20. How, if at all, could removing the requirement to use the DS–2 from section 200.419 impact compliance by research universities with the requirements of 41 U.S.C. 1502 or the implementing regulations at FAR, Chapter 99 for government contracts? To what extent would removing the requirement to use the DS–2 at section 200.419 reduce burden if the statutory and FAR-based requirements remain in effect?

OMB proposes to require several revisions to the general provisions for items of costs. Specifically, in section 200.420, OMB proposes to add further clarifying text explaining that the listed items of cost are not intended to provide a comprehensive list and that failure to mention an item, even as an example, is not intended to imply that is allowable or unallowable. OMB proposes this clarification to address numerous questions about allowability of costs that arise in the Federal financial assistance community.

In section 200.422, OMB proposes to incorporate the definition of an ''advisory council or committee.''

At section 200.431, OMB proposes to revise the section on fringe benefits to require recipients and subrecipients to allocate payments for unused leave as general administrative expenses or include them in a fringe benefit rate with cognizant agency approval. Based on feedback from the oversight community, OMB also proposes in section 200.431 to clarify that recipients and subrecipients may not charge unfunded pension and post-retirement health benefits to an award in a manner that is inconsistent with the allocation principles of Subpart E. Also in section 200.431, OMB proposes additional clarifying guidance on pension plan costs and post-retirement health plans.

OMB proposes to clarify the description of conferences in section 200.432 to remove any limitations provided by the specific types of events listed in the guidance currently. OMB also proposes to allow for dependent-care costs associated with participants' attending or partaking in program-related conferences.

OMB proposes to revise section 200.438 entertainment costs to include prizes, which currently reside in Subpart B, despite the fact that prizes are an item of cost.

In section 200.440, OMB removed the requirement for prior approval of fluctuations of exchange rates. While a recipient or subrecipient needs prior approval for additional Federal funding, no approval is required because an exchange rate has fluctuated and resulted in a necessary charge to available funding.

In section 200.454, OMB proposes to remove prior approval requirements for the cost of membership in any civic or community organization.

In section 200.455 on organization costs, OMB proposes to clarify that any costs associated with either persuading or dissuading employees from collective bargaining and related activities are not allowable under Federal awards. OMB also proposes to add clarifying language that certain costs related to data, evaluation, and other related organization costs are allowable.

In section 200.456, OMB proposes to remove the prior approval requirement of participant support costs. OMB proposes to clarify, however, that the treatment of participant costs is ultimately the responsibility of the recipient or subrecipient to determine, document, and treat consistently across all Federal awards (and when negotiating indirect rates).

In section 200.461, OMB proposes additional clarifying guidance on publication and printing costs by adding reference to ''article processing charges'' or ''similar open access fees.''

In section 200.467, OMB also proposes to remove the prior approval option for selling and marketing costs, clarifying selling and marketing costs are unallowable unless they meet the requirements in section 200.421 and are required to meet the requirements of the award.

Finally, OMB proposes to revise the section on termination costs at section 200.472 to also include closeout costs. Specifically, OMB proposes to include guidance for recipients and subrecipients to charge administrative costs specifically associated with the closeout of a Federal award. OMB received feedback from the Federal financial assistance community that the exclusion of closeout costs in the Uniform Guidance has been problematic as recipients and subrecipients have been unable to charge actual costs associated with closeout actions, such as certain administrative or staff costs not covered through indirect cost recoveries.

Subpart F—Audit Requirements

In this subpart, OMB proposes to raise the audit threshold from $750,000 to $1,000,000 in section 200.501. OMB reviewed audit submission data as well as economic data when determining the increase to this threshold. Every two years, the Director of OMB is authorized to adjust the dollar amount of this threshold consistent with the purposes of the Single Audit Act, provided the Director does not make such adjustments below $300,000. 31 U.S.C. 7502.

In section 200.502 OMB also proposes to clarify that, in determining Federal awards expended, loan and loan guarantees retain their Federal character through the end of the Federal award

period of performance unless otherwise specified in statute or Federal agency regulations. In response to feedback from Federal agencies, OMB proposes to revise the guidance to require that the schedule of expenditures of Federal awards for comprehensive annual financial reports identify the State, municipal, or local entity recipient or subrecipient of a Federal award. This change is necessary to provide greater transparency and understanding of the information provided in the schedule.

In section 200.510, at paragraph (b), OMB proposes additional guidance explaining that, for audits covering multiple recipients (such as departments, agencies, IHEs, and other organizational units), the schedule of expenditures must identify the recipient of the Federal award.

In section 200.513, OMB proposes to revise the responsibilities of Federal agencies. Specifically, OMB proposes to encourage Federal agencies to engage with external audit stakeholders and the Federal agency's Office of Inspector General National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts to OMB. In the same section OMB also proposes to clarify that a Federal agency's key management single audit liaison must also coordinate with the agency's Office of Inspector General NSAC when appropriate.

In section 200.514, on scope of audit, OMB proposes to revise compliance requirements to specify that compliance testing must include a test of transactions and other auditing procedures necessary to provide the auditor with sufficient evidence to support an opinion on compliance.

In section 200.516, based on feedback OMB received from the Federal financial assistance community, OMB proposes to revise in the definitions of known questioned costs and likely questioned costs and provide further clarity on how they are identified in an audit report.

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

OMB proposes to revise this appendix in its entirety in support of the goal of simplifying and clarifying the grant solicitation and application process, which is a key objective under Executive Order 14058 on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government. The proposed changes to the notice of funding opportunity in Appendix I are intended to improve the quality and accessibility of funding opportunities. Specifically, the proposed revisions to Appendix I intend to: (1) follow plain language principles; (2) group similar items together to streamline content; (3) align sections more closely to the application process; (4) include basic information at the top of a funding opportunity so that applicants can more easily make decisions about whether or not to apply; (5) clearly define what must be included in a section of the funding opportunity versus what is at an agency's discretion; and (6) provide flexibility to agencies while also giving applicants a common way to find information in every funding opportunity.

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

OMB proposes to update this appendix to adjust the exclusion threshold of subawards from $25,000 to $50,000 for modified total direct costs.

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

OMB proposes to update this appendix to adjust the exclusion threshold of subawards from $25,000 to $50,000 for modified total direct costs. OMB also proposes to clarify that under the direct cost allocation method, joint costs include costs for information technology.

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

OMB proposes to update this appendix to adjust the exclusion threshold of subawards from $25,000 to $50,000 under modified total direct costs (MTDC). OMB also proposes to clarify the meaning of ''department or agency'' for State and local governments.

OMB also proposes a revision to underscore that Federal agencies must accept indirect cost proposals developed by State or local departments or agencies receiving less than $35 million in their fiscal year. The proposed revision to this appendix also provides that Federal agencies cannot compel these State or local governmental departments or agencies to accept the *de minimis* rate, or any other rate established by the Federal agency, in place of their indirect cost proposals. OMB emphasizes, however, that any such indirect cost proposals must be developed in accordance with the requirements of part 200 and maintained for audit—along with related supporting documentation.

Appendix X to Part 200—Data Collection Form (Form SF–SAC)

OMB proposes to revise this appendix to clarify where audit submission instructions are located.

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

OMB proposes to revise this award term to be consistent with the statutory obligation and to reflect the appropriate location (responsibility and qualification records) in *SAM.gov* for reporting integrity and performance matters. OMB proposes to renumber the award term to align to the requirements of the standard organization of the Code of Federal Regulations.

Other Revisions Under Consideration for Future Updates

OMB may consider additional revisions for potential future updates. Specifically, OMB welcomes additional comments from the public on the following topics for consideration in possible additional revisions in the future:

- Establishing specific audit requirements for for-profit entities, which are not subject to the requirements of Subpart F;
- Incorporating the requirements of National Security Presidential Management (NSPM)–33 on research security requirements;
- Providing additional guidance in 2 CFR concerning the relationship of specific aspects of the guidance to loans and loan guarantees;
- Establishing mechanisms to automatically adjust certain thresholds due to inflation or other triggering events (where permitted by law).
- Removing additional prior approval requirements.
- Challenges related to negotiating indirect costs, working with cognizant agencies, or any other topics related to indirect costs that could be addressed in future updates; and
- Expanding the guidance in Subpart F to include more specific requirements on the scope of an audit (''proper perspective'') so that agencies have additional contextual information to guide them in resolving audit findings.

Request for Comments

OMB requests comments on all aspects of the propose guidance in this document, including on any reliance interests that commenters may have based on the existing text of 2 CFR, subtitle A that OMB's proposal may affect, and that OMB should consider in deciding whether or how to finalize this guidance.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

Executive Orders (E.O.s) 12866, 13563, and 14094 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 OMB Guidance for Grants and Agreements published in subtitle A of 2 CFR is guidance to Federal agencies and not regulation. 2 CFR 1.100(b). OMB has thus determined that the revision of 2 CFR is not a significant regulatory action under E.O. 12866, as amended.

Regulatory Flexibility Act

This proposed guidance is exempt from the notice and comment requirements of the Administrative Procedure Act (APA) because it is guidance to Federal agencies and not regulation. See 5 U.S.C. 553(b). Moreover, even if this proposed guidance were otherwise subject to 5 U.S.C. 553, it would be exempt from the notice and comment requirement as a matter related to grants. See 5 U.S.C. 553(a)(2). OMB nonetheless provides the following information for the information of the public. For a rule subject to the notice-and-comment provisions of the APA, the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.,* requires that an agency provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Based on the nature of the revisions proposed in this notice, OMB does not expect this guidance to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. There are some proposed revisions that may impose a non-significant burden; however, there are more proposed revisions that reduce burden to small entities. When reviewing all proposed revisions, the burden that will be reduced for recipients is much greater than the burden imposed.

Unfunded Mandates Reform Act of 1995

The proposed guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). The proposed guidance would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $168 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This proposed guidance has been analyzed in accordance with the principles and criteria contained in E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999). OMB has determined that this proposed guidance would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The guidance in 2 CFR is inherently national in scope and significance. Regardless, in accordance with section 4(d) of E.O. 13132, OMB consulted with appropriate State and local officials that may be affected by Federal agencies' implementation of OMB's revised guidance by means of posting the RFI prior to proposing revisions. OMB weighed carefully the interests of those who submitted comments in response to the RFI in proposing revisions to the guidance, which balance the State interests with the need to provide Federal agencies with consistent, uniform, efficient, and transparent guidance, which is consistent with authorizing law.

Paperwork Reduction Act

This guidance does not contain a new requirement for information collection. Rather, it streamlines requirements in specific sections. Thus, the Paperwork Reduction Act does not apply.

Executive Order 13175 (Tribal Consultation)

OMB has analyzed this revised guidance in accordance with the principles and criteria contained in E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments'' 65 FR 67249 (Nov. 9, 2000). On March 7, 2023, OMB held a two-hour Tribal consultation to solicit feedback from Tribal representatives. OMB also proposes providing greater flexibility to Tribal governments in the proposed guidance centered on procurement standards and disposition of equipment. OMB also proposes to clarify the definition of Indian Tribes.

List of Subjects

2 CFR Part 1

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs.

2 CFR Part 25

Administrative practice and procedure; Grant programs; Grants administration; Loan programs.

2 CFR Part 170

Colleges and universities; Grant programs; Hospitals; International organizations; Loan programs; Reporting and recordkeeping requirements.

2 CFR Part 175

Administrative practice and procedures; Grant programs; Indians—tribal government; Nonprofit organizations; State and local governments.

2 CFR Part 180

Administrative practice and procedure; Grant programs; Loan programs; Reporting and recordkeeping requirements.

2 CFR Part 182

Administrative practice and procedure; Drug abuse; Grant programs; Reporting and recordkeeping requirements.

2 CFR Part 183

Foreign aid; Grants administration; Grant programs; International organizations; Reporting and recordkeeping requirements.

2 CFR Part 200

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs.

For the reasons stated in the preamble, the Office of Management and Budget proposes to amend title 2, subtitle A, chapters I and II of the Code of Federal Regulations as follows:

■ 1. Revise the heading of title 2 to read as follows:

Title 2—Federal Financial Assistance

■ 2. Revise the heading of subtitle A of title 2 to read as follows:

Subtitle A—Office of Management and Budget Guidance for Federal Financial Assistance

■ 3. Revise part 1, consisting of §§ 1.100 through 1.305, to read as follows:

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

Sec.

Subpart A—Introduction to Title 2 of the CFR

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 31 U.S.C. 6307; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

Subpart A—Introduction to Title 2 of the CFR

§ 1.100 Content of this title.

This title contains:

(a) Office of Management and Budget (OMB) guidance to Federal agencies on governmentwide policies for the award and administration of Federal financial assistance; and

(b) Federal agency regulations implementing that OMB guidance.

§ 1.105 Organization and subtitle content.

(a) This title is organized into two subtitles.

(b) The OMB guidance described in § 1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance, not regulation.

(c) Each Federal agency that awards Federal financial assistance has a chapter in subtitle B in which it issues those regulations. The Federal agency regulations in subtitle B differ in nature from the OMB guidance in subtitle A because the OMB guidance is not regulatory. Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance, to the extent that the agency regulations require compliance with all or portions of the OMB guidance. *See also* § 1.220.

§ 1.110 Issuing authorities.

OMB issues this subtitle. Each Federal agency that has a chapter in subtitle B of this title issues that chapter.

Subpart B—Introduction to Subtitle A

§ 1.200 Purpose of chapters I and II.

Chapters I and II of subtitle A provide OMB guidance to Federal agencies that helps ensure consistent and uniform governmentwide policies and procedures for the management of the agencies' Federal financial assistance.

§ 1.205 Applicability to Federal financial assistance.

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another. All portions of the guidance apply to grants and cooperative agreements, and some portions also apply to other types of Federal financial assistance. For example, the:

(a) Guidance on debarment and suspension in part 180 of this subtitle applies broadly to all Federal financial assistance, and not just to grants and cooperative agreements.

(b) Cost principles in subpart E of part 200 of this subtitle apply to procurement contracts issued under a Federal award, as well as to Federal financial assistance. Cost principles are implemented for Federal agencies' direct procurement contracts through the Federal Acquisition Regulation in title 48 of the CFR, rather than through Federal agency regulations on Federal financial assistance in this title.

§ 1.210 Applicability to Federal agencies and others.

(a) This subtitle contains guidance that directly applies only to Federal agencies.

(b) The guidance in this subtitle may affect other entities through each Federal agency's implementation of the guidance, portions of which may apply to:

(1) The agency's awarding or administering officials;

(2) Recipients and subrecipients that receive or apply for the agency's Federal financial assistance or receive subawards under grants or cooperative agreements; or

(3) Any other entities involved in agency transactions subject to the guidance in this chapter.

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR.

§ 1.220 Federal agency implementation of this subtitle.

A Federal agency that awards Federal financial assistance subject to the OMB guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and in guidance documents, policy documents, and procedural issuances, such as internal instructions to the agency's awarding and administering officials. An applicant, recipient, or subrecipient would see the effect of that implementation in the organization and content of the agency's announcements of funding opportunities and in its award terms and conditions.

§ 1.230 Maintenance of this subtitle.

OMB issues guidance in this subtitle after publication in the **Federal Register**. Any portion of the guidance that has a potential impact on the public is published with an opportunity for public comment.

§ 1.231 Severability.

The provisions of this subtitle are separate and severable from one another. If any provision of this subtitle is held invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this part, which should remain in effect.

Subpart C—Responsibilities of OMB and Federal Agencies

§ 1.300 OMB responsibilities.

OMB is responsible for:

(a) Issuing and maintaining the guidance in this subtitle, as described in § 1.230;

(b) Interpreting the policy requirements in this subtitle;

(c) Reviewing Federal agency regulations implementing the requirements of this subtitle, as required by Executive Order 12866;

(d) Conducting broad oversight of governmentwide compliance with the guidance in this subtitle; and

(e) Performing other OMB functions specified in this subtitle.

§ 1.305 Federal agency responsibilities.

The head of each Federal agency that awards and administers Federal financial assistance subject to the guidance in this subtitle is responsible for:

(a) Implementing the guidance in this subtitle;

(b) Ensuring that the Federal agency complies with their implementation of the guidance;

(c) Coordinating with the Council on Federal Financial Assistance, the Grants Quality Service Management Office, and other governance committees as appropriate; and

(d) Performing other functions specified in this subtitle.

■ 4. Revise part 25, consisting of § 25.100 through appendix A to part 25, to read as follows:

PART 25—UNIQUE ENTITY IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 109–282; Pub. L. 110–252, Pub. L. 113–101, Pub. L. 117–40.

Subpart A—General

§ 25.100 Purpose of this part.

This part provides guidance to Federal agencies that:

(a) The unique entity identifier (UEI) is the universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients, and;

(b) The System for Award Management (*SAM.gov*) is the repository for standard information about applicants and recipients.

§ 25.105 Applicability.

(a) This part applies to a Federal agency's Federal financial assistance as defined in § 25.400. This part applies to all applicants for and recipients of Federal financial assistance unless exempted by Federal statute or § 25.110.

(b) Subrecipients are required to obtain a UEI in accordance with subpart C. This part does not apply to subrecipients of subrecipients (second-tier subrecipients) or contractors under Federal awards.

(c) This part does not apply to an individual who applies for or receives Federal financial assistance as a natural person (unrelated to any business or nonprofit organization an individual owns or operates).

(d) Because this part applies to loan guarantees and other guaranteed programs, recipients of the guarantee from the Federal agency (for example, lenders of guaranteed loans) are required to complete entity validations and acquire a UEI. Additionally, at the Federal agency's discretion, non-individual beneficiary borrowers (for example, small businesses or corporations) may be required by the Federal agency to obtain a UEI or register in *SAM.gov*.

§ 25.110 Exceptions to this part.

(a) *General exceptions.* (1) Under a condition identified in paragraph (a)(2) of this section, a Federal agency may exempt an applicant or recipient of Federal financial assistance from the requirement to obtain a UEI, register in *SAM.gov*, or both.

(i) If a Federal agency grants an exception under paragraph (a)(2) of this section, it must use a generic entity identifier in the data it reports to *USAspending.gov* if reporting for a prime award of Federal financial assistance to the recipient is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended, hereafter cited as ''Transparency Act''). Granting an exception under paragraph (a)(2) of this section does not impact a Federal agency's responsibility for reporting under the Transparency Act, except that it may use a generic entity identifier in the circumstances described.

(ii) Federal agencies should use generic entity identifiers rarely as it prevents recipients from fulfilling reporting requirements such as subaward or executive compensation reporting required by the Transparency Act.

(2) A Federal agency may exempt either an applicant or recipient when:

(i) The Federal agency determines that it must protect information about the entity from disclosure in the national security or foreign policy interests of the United States or to avoid jeopardizing the personal safety of the entity's staff, partners, beneficiaries, and participants;

(ii) (A) All of the following conditions are met:

(*1*) the entity is a foreign organization or foreign public entity;

(*2*) the Federal award or subaward will be performed outside the United States;

(*3*) the Federal award or subaward will be less than $25,000; and

(*5*) the Federal agency deems it to be impractical for the entity to comply with the requirements of this part.

(B) The Federal agency must determine this exemption on a case-by-case basis while utilizing a risk-based approach; or

(iii) For applicants, the Federal agency determines that there are exigent circumstances that prohibit the applicant from receiving a UEI and registering in *SAM.gov* before receiving a Federal award. In these instances, Federal agencies must require the recipient to obtain a UEI and complete registration in *SAM.gov* within 30 days of the Federal award date.

(b) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards, applicants, or recipients subject to the requirements of this part when exceptions are not prohibited by statute.

Subpart B—Policy

§ 25.200 Requirements for notice of funding opportunities, regulations, and application instructions.

(a) A Federal agency that issues Federal financial assistance (see § 25.400) must include the requirements of paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued on or after the effective date of this guidance. A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each applicant that does not have an exemption under § 25.110 to:

(1) Be registered in *SAM.gov* before submitting an application;

(2) Maintain a current and active registration in *SAM.gov* at all times during which it has an active Federal award or an application under consideration by a Federal agency. The applicant must review and update its information in *SAM.gov* annually from the date of initial registration or subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the applicant's immediate and highest-level owner and subsidiaries, as well as providing information on all predecessors that have received a

Federal award or contract within the last three years; and

(3) Include its UEI in each application it submits to the Federal agency.

(c) For the purposes of this policy: the applicant meets the Federal agency's eligibility criteria and has the legal authority to apply and receive the Federal award. For example, if a consortium applies for a Federal award to be made to the consortium as the recipient, the consortium must have a UEI. If a consortium is eligible to receive funding under a Federal agency program, but the agency's policy is to make the Federal award to a lead entity for the consortium, the UEI of the lead applicant must be used.

§ 25.205 Effect of noncompliance with a requirement to obtain a UEI or register in SAM.gov.

(a) Unless an entity is exempt under § 25.110, a Federal agency may not issue a Federal award or amend an existing Federal award if the entity is not in compliance with the requirements of this part. This does not apply to amendments to terminate or close out a Federal award.

(b) At the time a Federal agency is ready to make a Federal award, if the intended recipient has not complied with the requirements to obtain a UEI and maintain an active registration in *SAM.gov* with current information, the Federal agency may make a Federal award to another applicant.

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, a Federal agency may add a UEI field to information collections previously approved by OMB, with no further approval required.

§ 25.215 Requirements for agency information systems.

Each Federal agency that awards Federal financial assistance (see § 25.400) must ensure that its information systems are able to both accept and transmit the UEI as the universal identifier for Federal financial assistance applicants and recipients.

§ 25.220 Use of award term.

(a) A Federal agency must include the award term in Appendix A in all Federal financial assistance agreements (see § 25.400) to accomplish the purpose of § 25.100.

(b) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

Subpart C—Recipient Requirements of Subrecipients

§ 25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.

(a) A recipient may not make a subaward to a subrecipient that has not obtained a UEI and provided it to the recipient. Subrecipients are not required to complete full registration in *SAM.gov* to obtain a UEI.

(b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient obtains and provides a UEI to the recipient.

Subpart D—Definitions

§ 25.400 Definitions.

Terms not defined in this part shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Applicant means any entity that applies for a Federal award directly to a Federal agency.

Entity includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (b); and

(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

Federal Award means an award of Federal financial assistance that an entity receives from a Federal agency.

Federal financial assistance:

(1) Means assistance that entities receive or administer in the form of a:

(i) Grant;

(ii) Cooperative agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a);

(iii) Loan;

(iv) Loan guarantee;

(v) Subsidy;

(vi) Insurance;

(vii) Food commodity;

(viii) Direct appropriation;

(ix) Assessed or voluntary contribution; or

(x) Any other financial assistance transaction that authorizes the entity's expenditure of Federal funds.

(2) For the purposes of this part, the term ''Federal financial assistance'' does not include:

(i) Technical assistance that provides services in lieu of money; and

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant.

Recipient means an entity that receives or administers a Federal Award directly from a Federal agency.

System for Award Management (*SAM.gov*) means the Federal repository into which an entity must provide the information required for the conduct of business as a recipient.

Unique entity identifier means the universal identifier assigned by *SAM.gov* to uniquely identify an entity.

Appendix A to Part 25—Award Term

I. System for Award Management (*SAM.gov*) and Universal Identifier Requirements

(a) *Requirement for System for Award Management.*

(1) Unless exempt from this requirement under 2 CFR 25.110, you must maintain a current and active registration in *SAM.gov*. Your registration must always be current and active until you submit all final reports required under this Federal award or receive the final payment, whichever is later. You must review and update your information in *SAM.gov* at least annually from the date of your initial registration or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying your immediate and highest-level owner and subsidiaries and providing information about your predecessors that have received a Federal award or contract within the last three years.

(b) *Requirement for Unique Entity Identifier (UEI).* (1) If you are authorized to make subawards under this Federal award, you:

(i) Must notify potential subrecipients that no entity may receive a subaward from you until the entity has provided its UEI to you.

(ii) May not make a subaward to an entity unless the entity has provided its UEI to you. Subrecipients are not required to complete full registration in *SAM.gov* to obtain a UEI.

(c) *Definitions.* For the purposes of this award term:

System for Award Management (SAM.gov) means the Federal repository into which a recipient must provide the information required for the conduct of business as a recipient. Additional information about registration procedures may be found in *SAM.gov* (currently at *https://www.sam.gov*).

Unique entity identifier means the universal identifier assigned by *SAM.gov* to uniquely identify an entity.

Entity is defined at 25 CFR 400 and includes all of the following types as defined in 2 CFR 200.1:

(1) Non-Federal entity;

(2) Foreign organization;

(3) Foreign public entity;

(4) Domestic for-profit organization; and

(5) Federal agency.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1.

■ 5. Revise part 170 to read as follows:

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 109–282; Pub. L. 110–252, Pub. L. 113–101, Pub. L. 117–40.

Subpart A—General

§ 170.100 Purpose of this part.

This part provides guidance to Federal agencies on establishing requirements for recipients of Federal awards to report information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), as amended by the Digital Accountability and Transparency Act of 2014 (Public Law 113–101), hereafter referred to as the ''Transparency Act.''

§ 170.105 Applicability.

(a) This part applies to a Federal agency's Federal financial assistance as defined in § 170.300. This part applies to all recipients and subrecipients of Federal awards who meet the reporting requirements of paragraph (c) of this section, unless exempt under Federal statute or by paragraph (d) of this section.

(b) This part does not apply to an individual who applies for or receives Federal financial assistance as a natural person (that is, unrelated to any business or nonprofit organization an individual owns or operates).

(c) *Reporting Requirements.* (1) The names and total compensation of an entity's five most highly compensated executives must be reported if:

(i) In the entity's preceding fiscal year, it received:

(A) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(B) $25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(ii) The public does not have access to information about the compensation of senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(d) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards or recipients when not prohibited by Federal statute.

Subpart B—Policy

§ 170.200 Federal agency reporting requirements.

(a) Federal agencies must publicly report Federal awards that equal or exceed the micro-purchase threshold (see 2 CFR 200.1). Federal agencies must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury's DATA Act Information Model Schema (DAIMS).

(b) Federal agencies should ensure that their agency-specific requirements do not require recipients to submit data that is the same as or similar to data required by the Transparency Act during a given reporting period.

§ 170.210 Requirements for notices of funding opportunities, regulations, and application instructions.

(a) A Federal agency that makes Federal awards subject to the Transparency Act must include the requirements of paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants under which Federal awards may be made that are subject to Transparency Act reporting requirements. A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each applicant, to which this part applies, to have the necessary processes and systems in place to comply with this part if they receive a Federal award.

§ 170.220 Use of award term.

(a) A Federal agency must include the award term in Appendix A to this part in each Federal award to a recipient under which the total funding is anticipated to equal or exceed $30,000 in Federal funding.

(b) Consistent with paragraph (a) of this section, a Federal agency is not required to include the award term in Appendix A of this part if the total amount of Federal funding under the Federal award will not equal or exceed $30,000. However, the Federal agency must subsequently add the award term if increases to the Federal funding result in the award equaling or exceeding $30,000.

(c) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

Subpart C—Definitions

§ 170.300 Definitions

Terms not defined in this part shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Applicant means any entity that applies for a Federal award directly from a Federal agency.

Entity includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (2) or (3); and

(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

Federal Award means an award of Federal financial assistance that an entity receives from a Federal agency.

Executive means an officer, managing partner, or any other employee holding a management position.

Federal financial assistance:

(1) Means assistance that entities receive or administer in the form of a:

(i) Grant;

(ii) Cooperative agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a);

(iii) Loan;

(iv) Loan guarantee;
(v) Subsidy;
(vi) Insurance;
(vii) Food commodity;
(viii) Direct appropriation;
(ix) Assessed or voluntary contribution; or
(x) Any other financial assistance transaction that authorizes the entity's expenditure of Federal funds.

(2) For the purposes of this part, the term ''Federal financial assistance'' does not include:

(i) Technical assistance that provides services in lieu of money;

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant;

(iii) Any classified Federal award; or

(iv) Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

Recipient means an entity that receives or administers a Federal Award directly from a Federal agency.

Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 29.402(c)(2).

Appendix A to Part 170—Award Term

I. Reporting Subawards and Executive Compensation

(a) *Reporting of first-tier subawards*—(1) *Applicability.* Unless you are exempt as provided in paragraph (d) of this award term, you must report each action that equals or exceeds $30,000 in Federal funds for a subaward to an entity or Federal agency. You must subsequently report an action if increases to the Federal funding results in the subaward equaling or exceeding $30,000.

(2) *Reporting Requirements.* (i) The entity or Federal agency must report each subaward described in paragraph (a)(1) of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at *http://www.fsrs.gov.*

(ii) For subaward information, report no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(b) *Reporting total compensation of recipient executives for entities*—(1) *Applicability.* You must report the total compensation for each of your five most highly compensated executives for the preceding completed fiscal year if:

(i) The total Federal funding authorized to date under this Federal award equals or exceeds $30,000;

(ii) in the preceding fiscal year, you received:

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 after receiving this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

(2) *Reporting Requirements.* You must report executive total compensation described in paragraph (b)(1) of this appendix:

(i) As part of your registration profile at *https://www.sam.gov.*

(ii) No later than the month following the month in which this Federal award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported by no later than December 31, 2025.)

(c) *Reporting of total compensation of subrecipient executives*—(1) *Applicability.* Unless a first-tier subrecipient is exempt as provided in paragraph (d) of this appendix, you must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

(i) The total Federal funding authorized to date under the subaward equals or exceeds $30,000;

(ii) In the subrecipient's preceding fiscal year, the subrecipient received:

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; and

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 after receiving this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

(2) *Reporting Requirements.* Subrecipients must report to you, the recipient, their executive total compensation described in paragraph (c)(1) of this appendix. You are required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at *http://www.fsrs.gov* no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(d) *Exemptions.* (1) If in the previous tax year you had gross income under $300,000, you are exempt from the requirements to report:

(i) Subawards, and

(ii) The total compensation of the five most highly compensated executives of any subrecipient.

(e) *Definitions.*

For purposes of this award term:

Entity includes:

(1) Whether for profit or nonprofit:

(i) A corporation;
(ii) An association;
(iii) A partnership;
(iv) A limited liability company;
(v) A limited liability partnership;
(vi) A sole proprietorship;
(vii) Any other legal business entity;
(viii) Another grantee or contractor that is not excluded by subparagraph (2); and
(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

Executive means an officer, managing partner, or any other employee holding a management position.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1.

Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).

■ 6. Revise part 175 to read as follows:

PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

Sec.

Authority: 22 U.S.C. 7104(g); 22 U.S.C. 7104a; 22 U.S.C. 7104b; 22 U.S.C. 7104c; 31 U.S.C. 503; 31 U.S.C. 6307; 31 U.S.C. 1111; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

Subpart A—General

§ 175.100 Purpose of this part.

This part establishes a Federal award term for grants and cooperative

agreements to implement the requirements in 22 U.S.C. 7104(g).

§ 175.105 Statutory requirement.

(a) Federal agencies are required to include in each Federal grant or cooperative agreement a condition that authorizes the Federal agency to terminate the award, without penalty, if a private entity receiving funds under the award as a recipient or subrecipient engages in:

(1) Severe forms of trafficking in persons;

(2) The procurement of a commercial sex act during the period of time that the grant or cooperative agreement is in effect;

(3) The use of forced labor in the performance of the grant or cooperative agreement; or

(4) Acts that directly support or advance trafficking in persons, including the following acts:

(i) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(ii) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(A) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(B) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(iii) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

(iv) Charging recruited employees a placement or recruitment fee; or

(v) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(b) Compliance plan and certification requirement.

(1) *Certification.* Prior to receiving a grant or cooperative agreement, if the estimated value of services required to be performed under the grant or cooperative agreement outside the United States exceeds $500,000, a recipient must certify that:

(i) The recipient has implemented a plan to prevent the activities described in paragraph (a) of this section, and is in compliance with this plan;

(ii) The recipient has implemented procedures to prevent any activities described in paragraph (a) of this section and to monitor, detect, and terminate any subcontractor, subgrantee, or employee of the recipient engaging in any activities described in paragraph (a) of this section; and

(iii) To the best of the recipient's knowledge, neither the recipient, nor any subcontractor or subgrantee of the recipient or any agent of the recipient or of such a subcontractor or subgrantee, is engaged in any of the activities described in paragraph (a) of this section.

(2) *Annual certification.* If the recipient receives the award, it must submit an annual certification consistent with paragraph (b)(1) of this section for each year the award is in effect.

(3) *Compliance plan.* Any plan or procedures implemented pursuant to paragraph (b) must be appropriate to the size and complexity of the grant or cooperative agreement and to the nature and scope of its activities, including the number of non-United States citizens expected to be employed.

(4) *Copies of the compliance plan.* The recipient must provide a copy of the plan to the grant officer upon request, and as appropriate, must post the useful and relevant contents of the plan or related materials on its website and at the workplace.

(5) *Minimum requirements of the compliance plan.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform recipient employees about the Government's policy prohibiting trafficking-related activities described in paragraph (a) of this section, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at *http://www.state.gov/j/tip/.*

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the recipient, subrecipient, contractor, or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents, subrecipients, contractors, or subcontractors at any tier and at any dollar value from engaging in trafficking in persons, including activities in paragraph (a) of this section, and to monitor, detect, and terminate any agents, subgrants, or subrecipient, contractor, or subcontractor employees that have engaged in such activities.

(c) Notification to Inspectors General and cooperation with government. The head of a Federal agency making or awarding a grant or cooperative agreement must require that the recipient of the grant or cooperative agreement:

(1) Immediately inform the Inspector General of the Federal agency of any information it receives from any source that alleges credible information that the recipient, any subcontractor or subgrantee of the recipient, or any agent of the recipient or of such a subcontractor or subgrantee, has engaged in conduct described in paragraph (a) of this section; and

(2) Fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.

Subpart B—Guidance

§ 175.200 Use of award term.

(a) To implement the requirements of 22 U.S.C. 7104(g) a Federal agency must include the award term in Appendix A of this part for the following Federal awards:

(1) A grant or cooperative agreement to a private entity, as defined in § 175.300; and

(2) A grant or cooperative agreement to a State, local government, Indian Tribe, foreign public entity, or any other recipient if funding under the award could be provided to a subrecipient that is a private entity.

(b) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

§ 175.205 Referral.

A Federal agency official should inform the agency's suspension and debarment official if an award is terminated based on a violation of a prohibition in the award term under Appendix A.

Subpart C—Definitions

§ 175.300 Definitions.

Terms not defined in this part shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Abuse or threatened abuse of law or legal process means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

Coercion means:

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Involuntary servitude includes a condition of servitude induced by means of:

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Private Entity means any entity, including for-profit organizations, nonprofit organizations, institutes of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

Recruitment Fee means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for:

(i) Advertising;

(ii) Obtaining permanent or temporary labor certification, including any associated fees;

(iii) Processing applications and petitions;

(iv) Acquiring visas, including any associated fees;

(v) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vi) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(vii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(viii) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(ix) Government-mandated fees, such as border crossing fees, levies, or worker welfare fund;

(x) Transportation and subsistence costs:

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xi) Security deposits, bonds, and insurance; and

(xii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is:

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to:

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

Severe forms of trafficking in persons means:

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

Appendix A to Part 175—Award Term

I. Trafficking in persons.

(a) *Provisions applicable to a recipient that is a private entity.* (1) Under this award, you as the recipient, your employees, subrecipients under this award, and subrecipient's employees may not engage in:

(i) Severe forms of trafficking in persons;

(ii) The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;

(iii) The use of forced labor in the performance of this award or any subaward; or

(iv) Acts that directly support or advance trafficking in persons, including the following acts:

(A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(1) Exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(2) The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

(D) Charging recruited employees a placement or recruitment fee; or

(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(2) We as the awarding Federal agency may unilaterally terminate this award, without penalty, if any private entity under this award:

(i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or

(ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this this appendix through conduct that is either:

(A) Associated with the performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ''OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),'' as implemented by our agency at [agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (for example, ''2 CFR part XX'')].

(b) *Provision applicable to a recipient other than a private entity.* (1) We as the awarding Federal agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity under this award:

(i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or

(ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this appendix through conduct that is either:

(A) Associated with the performance under this award; or

(B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ''OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),'' as implemented by our agency at [agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (for example, ''2 CFR part XX'')].

(c) *Provisions applicable to any recipient.* (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a)(1) of this appendix.

(2) Our right to unilaterally terminate this award as described in paragraphs (a)(2) or (b)(1) of this appendix:

(i) Implements the requirements of 22 U.S.C. 78, and

(ii) Is in addition to all other remedies for noncompliance that are available to us under this award.

(3) You must include the requirements of paragraph (a)(1) of this award term in any subaward you make to a private entity.

(d) *Definitions.* For purposes of this award term:

Employee means either:

(1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

(2) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing requirements.

Private Entity means any entity, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

The terms ''severe forms of trafficking in persons,'' ''commercial sex act,'' ''sex trafficking,'' ''Abuse or threatened abuse of law or legal process,'' ''coercion,'' ''debt bondage,'' and ''involuntary servitude'' have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

■ 7. Revise part 180 to read as follows:

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 103–355; Pub. L. 109–282; Pub. L. 110–252; Pub. L. 111–84; Pub. L. 113–101; Pub. L. 115–232; Pub. L. 117–40; E.O. 12549; E.O. 12689.

§ 180.5 What does this part do?

This part provides guidance for Federal agencies on how to implement the government-wide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized into two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I.

(b) Subparts A through I contain uniform government-wide standards that Federal agencies are to use to specify:

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the government-wide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

§ 180.15 To whom does the guidance apply?

This part provides guidance to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of this guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

§ 180.20 What must a Federal agency do to implement these guidelines?

As Section 3 of Executive Order 12549 requires, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

§ 180.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish policies and procedures for that Federal agency's nonprocurement debarment and suspension programs and activities consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect on that Federal agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must:

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under § 180.135 to let an excluded person participate in a covered transaction.

(2) State whether the Federal agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under § 180.220(c).

(3) Identify the method(s) a Federal agency official may use when entering into a covered transaction with a primary tier participant to communicate to the participant the requirements described in § 180.435. Examples of methods are an award term that requires compliance as a condition of the award, an assurance of compliance obtained at the time of application, or a certification.

(4) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower tier participants, as described in § 180.330(a). If there is a specified method, the regulation must require Federal agency officials to communicate that requirement when entering into covered transactions with primary tier participants.

(c) May also, at the Federal agency's option:

(1) Identify any specific types of transactions the Federal agency includes as ''nonprocurement transactions'' in addition to the examples provided in § 180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.215(g)(2).

(3) Identify specific examples of types of individuals who would be ''principals'' under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described in § 180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under § 180.930 or suspending officials under § 180.1010.

(6) Include a subpart covering disqualifications, as authorized in § 180.45.

(7) Include any provisions authorized by OMB.

§ 180.30 Where does a Federal agency implement these guidelines?

Each Federal agency that participates in the government-wide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title.

§ 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension, established by section 4 of Executive Order 12549, recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the **Federal Register** for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

§ 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I:

(a) Address disqualified persons only to:

(1) Provide for their inclusion in the System for Award Management (*SAM.gov*) Exclusions; and

(2) State the responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the:

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal agency takes and may include special procedures.

Subpart A—General

§ 180.100 How are subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in table 1:

TABLE 1 TO PARAGRAPH (a)

In subpart . . .	You will find provisions related to . . .
A	general information about Subparts A through I.
B	the types of transactions that are covered by the government-wide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Federal agency officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for entering information into *SAM.gov* Exclusions.
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.

(b) Table 2 shows which subparts may be of special interest to you, depending on who you are:

TABLE 2 TO PARAGRAPH (b)

If you are . . .	See subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction	A, B, C and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, E, F, G and I.
(5) a debarring official	A, B, D, F, H and I.
(6) a Federal agency official authorized to enter into a covered transaction	A, B, D, E and I.

§ 180.105 How is this part written?

(a) This part uses a ''plain language'' format to make it easier for the general public and business community. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as ''I'' and ''you,'' change from subpart to subpart depending on the audience being addressed.

(c) The ''Covered Transactions'' diagram in the appendix to this part shows the levels or ''tiers'' at which a Federal agency may enforce an exclusion.

§ 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meanings. Those terms are defined in subpart I. For example, three important terms are:

(a) *Exclusion or excluded,* which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition Regulations (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified,* which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible,* which generally refers to a person who is either excluded or disqualified.

§ 180.115 What do subparts A through I of this part do?

Subparts A through I provide for the reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulations and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

§ 180.120 Do subparts A through I of this part apply to me?

Portions of subparts A through I (see table at § 180.100(b)) apply to you if you are a:

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom a Federal agency has initiated a debarment for suspension action);

(c) Federal agency debarring or suspending official; or

(d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

§ 180.125 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude persons who are not presently responsible from Federal programs.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 180.130 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ 180.135, 315, and 420, a person who is excluded by any Federal agency may not:

(a) Be a participant in a Federal agency transaction that is a covered transaction; or

(b) Act as a principal of a person participating in one of those covered transactions.

§ 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

(a) A Federal agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Federal agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

§ 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

When a Federal agency excludes a person under Executive Order 12549 or Executive Order 12689 on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the Federal Acquisition Regulations. Therefore, an exclusion under this part has a reciprocal effect on Federal procurement transactions.

§ 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

When a Federal agency excludes a person under the Federal Acquisition Regulations (FAR) on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has a reciprocal effect on Federal nonprocurement transactions.

§ 180.150 Against whom may a Federal agency take an exclusion action?

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

§ 180.155 How do I know if a person is excluded?

Check the System for Award Management (*SAM.gov*) Exclusions to determine whether a person is excluded. The General Services Administration (GSA) maintains *SAM.gov* Exclusions and makes it available, as detailed in subpart E. When a Federal agency takes action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into *SAM.gov* Exclusions.

Subpart B—Covered Transactions

§ 180.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction subject to this part's prohibitions. It may be a transaction at:

(a) The primary tier, between a Federal agency and a person (see Appendix to this part); or

(b) A lower tier between a participant in a covered transaction and another person.

§ 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless:

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 180.310 or § 180.415; or

(2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under § 180.135.

§ 180.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

§ 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to:

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, when a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.,* those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that a Federal agency needs to respond to a national or agency recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if:

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements, or commitments with the United States. Federal agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in *SAM.gov* Exclusions on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements, or commitments with the United States (see section 1290 of the National Defense Authorization Act for Fiscal Year 2017). The head of a Federal agency may grant an exception to this requirement under 2 CFR 180.135 and with the concurrence of the OMB Director.

§ 180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part:

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded under nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction covered under § 180.210, and the contract amount is expected to equal or exceed $25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract is always a covered transaction regardless of the amount or who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the Appendix to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if:

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the Appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed $25,000.

§ 180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because of the Federal agency regulations governing the transaction. The appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking *SAM.gov* Exclusions; or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) As a participant, you may not enter into a covered transaction with an excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction unless you have obtained an exception under the disqualifying statute, Executive Order, or regulation.

§ 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) As a participant, you may continue to use the services of an excluded person as a principal under a covered transaction if you were using that person's services in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should decide whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under § 180.135.

§ 180.320 Must I verify that principals of my covered transactions are eligible to participate?

(a) Yes. As a participant, you are responsible for determining whether your principals of your covered transactions are excluded or disqualified from participating in the transaction.

(b) You may decide the method and frequency by which you do so. You may, but are not required to check *SAM.gov* Exclusions.

§ 180.325 What happens if I do business with an excluded person in a covered transaction?

As a participant, if you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participating in the transaction. You may do so using any method(s) unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you, as the participant, must notify the Federal agency office that is entering into the transaction with you if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses listed in § 180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?

As a primary tier participant, disclosing unfavorable information about yourself or a principal under § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The Federal agency will consider the information when determining whether to enter into the covered transaction. The Federal agency will also consider any additional information or explanation you elect to submit with the disclosed information.

§ 180.345 What happens if I fail to disclose information required under § 180.335?

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the Federal agency may:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that:

(a) You failed to disclose information earlier, as required by § 180.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

Disclosing Information—Lower Tier Participants

§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you, as a lower tier participant, must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 180.360 What happens if I fail to disclose information required under § 180.355?

When a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that:

(a) You failed to disclose information earlier, as required by § 180.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 180.400 May I enter into a transaction with an excluded or disqualified person?

(a) As a Federal agency official, you may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.

(b) You may not enter into any transaction with a person disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded unless you obtain an exception under § 180.135.

§ 180.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you, as a Federal agency official, may not approve a participant's use of an excluded person as a principal under that transaction unless you obtain an exception under § 180.135.

§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) As a Federal agency official, you may continue covered transactions with an excluded person or under which an excluded person is a principal if the transactions were in existence when the person was excluded. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person or under which an excluded person is a principal unless you obtain an exception under § 180.135.

§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you, as a Federal agency official, may not approve:

(a) A covered transaction with a person who is currently excluded unless you obtain an exception under § 180.135; or

(b) A transaction with a person who is disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

§ 180.425 When do I check to see if a person is excluded or disqualified?

As a Federal agency official, you must check to see if a person is excluded or disqualified before you:

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your Federal agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your Federal agency's approval of the principal is required.

§ 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) As a Federal agency official, you must check *SAM.gov* Exclusions when you take any action listed in § 180.425.

(b) You must review the information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

§ 180.435 What must I require of a primary tier participant?

As a Federal agency official, you must require each participant in a primary tier covered transaction to:

(a) Comply with subpart C as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with subpart C to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you, as a Federal agency official, may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?

As a Federal agency official, if you determine that a participant failed to disclose information, as required by § 180.335, at the time it entered into a covered transaction with you, you may:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?

As a Federal agency official, if you determine that a lower tier participant failed to disclose information, as required by § 180.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—System for Award Management (*SAM.gov)* Exclusions

§ 180.500 What is the purpose of the System for Award Management (*SAM.gov*) Exclusions?

The *SAM.gov* Exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 180.505 Who uses *SAM.gov* Exclusions?

(a) Federal agency officials use *SAM.gov* Exclusions to determine whether to enter into a transaction with a person, as required under § 180.430.

(b) Participants also may, but are not required to, use *SAM.gov* Exclusions to determine if:

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *SAM.gov* Exclusions are available to the general public.

§ 180.510 Who maintains *SAM.gov* Exclusions?

GSA maintains *SAM.gov* Exclusions. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into *SAM.gov* Exclusions.

§ 180.515 What specific information is in *SAM.gov* Exclusions?

(a) At a minimum, *SAM.gov* Exclusions indicate:

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross-references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The unique entity identifier approved by the GSA of the excluded or disqualified person, if available.

(b)(1) The *SAM.gov* Exclusions includes a field for the Taxpayer Identification Number (TIN), or the Social Security Number (SSN) for an individual, of an excluded or disqualified person.

(2) Agencies disclose an individual's SSN to verify an individual's identity only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 180.520 Who places the information into *SAM.gov* Exclusions?

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into *SAM.gov* Exclusions:

(a) Information required by § 180.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the Social Security Number (SSN) for an individual, if the number is available and may be disclosed under the law;

(c) Information about an excluded or disqualified person, within three business days, after:

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 180.525 Whom do I ask if I have questions about a person in *SAM.gov* Exclusions?

If you have questions about a listed person in *SAM.gov* Exclusions, ask the point of contact for the Federal agency that placed the person's name into *SAM.gov* Exclusions. You may find the Federal agency point of contact from *SAM.gov* Exclusions.

§ 180.530 Where can I find *SAM.gov* Exclusions?

You may access *SAM.gov* Exclusions through the internet, currently at *https://www.sam.gov*.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 180.600 How do suspension and debarment actions start?

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it, and the agency will investigate. The officials refer the question of whether to suspend or debar you to their suspending or debarring official for consideration, if appropriate.

§ 180.605 How does suspension differ from debarment?

Suspension differs from debarment in that:

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal or debarment proceeding.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must:	
(1) Have *adequate evidence* that there may be a cause for debarment of a person; and	
(2) Conclude that *immediate action* is necessary to protect the Federal interest	Must conclude, based on a *preponderance of the evidence,* that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension *first,* and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 180.610 What procedures does a Federal agency use in suspension and debarment actions?

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and subpart G.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and subpart H.

§ 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or email address of:

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 180.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one Federal agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 180.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions unless the suspension or debarment decision is limited:

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official:

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, corporation, company, or similar arrangement or with the organization's knowledge, approval, or acquiescence, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

§ 180.635 May a Federal agency resolve an administrative action in lieu of debarment or suspension?

Yes. A Federal agency may resolve an administrative action in lieu of debarment or suspension by entering into an agreement at any time if it is in the Federal Government's best interest.

§ 180.640 May an agreement to resolve an administrative action include a voluntary exclusion?

Yes. If a Federal agency enters into an agreement to resolve an administrative action with you in which you agree to be excluded, it is called a voluntary exclusion and has a government-wide effect.

§ 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

(a) Yes. The Federal agency agreeing to the voluntary exclusion enters information about it into *SAM.gov* Exclusions.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

§ 180.650 May an administrative agreement be the result of a settlement?

Yes. A Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

§ 180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement in *SAM.gov* within three business days after entering into the agreement. The suspending and debarring official must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov*. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

§ 180.660 Will administrative agreement information about me in *SAM.gov* be corrected or updated?

Yes. The suspending or debarring official who entered information into *SAM.gov* about an administrative agreement with you:

(a) Must correct the information within three business days if the official subsequently learn that any information is erroneous.

(b) Must correct in *SAM.gov*, within three business days, the ending date of the period during which the agreement is in effect if the agreement is amended to extend that period.

(c) Must report any other modification to the administrative agreement in *SAM.gov* within three business days.

(d) Is strongly encouraged to amend the information in *SAM.gov* in a timely way to incorporate any update that the official obtains and that could be helpful to Federal agencies who must use the system.

Subpart G—Suspension

§ 180.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that:

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 180.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 180.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the

suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) In making this determination, the suspending official may examine:

(1) The basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents;

(2) An indictment, criminal information, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual or legal matters constitutes adequate evidence for purposes of suspension actions; and

(3) Other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 180.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 180.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you:

(a) That you have been suspended;

(b) That your suspension is based on:

(1) An indictment;

(2) A criminal information;

(3) A conviction;

(4) A civil judgment;

(5) Other adequate evidence that you have committed irregularities that seriously reflect on the propriety of further Federal Government dealings with you; or

(6) Conduct of another person that has been imputed to you or your affiliation with a suspended or debarred person;

(c) Of any other irregularities supporting your suspension in terms sufficient to put you on notice without disclosing certain evidence in the Federal Government's pending or contemplated legal proceedings;

(d) Of the cause(s) upon which the suspending official relied under § 180.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, subpart F, and any other Federal agency procedures governing suspension decision-making; and

(g) Of the government-wide effect of your suspension from procurement and nonprocurement programs and activities.

§ 180.720 How may I contest a suspension?

As a respondent, if you wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.725 How much time do I have to contest a suspension?

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) The Federal agency taking the action considers the notice to be received by you:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

§ 180.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent, your submission to the suspending official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) Your submission must also identify any of the paragraphs in § 180.730(a) that do not apply to you.

(c) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

§ 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the suspending official determines that:

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other findings by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are no material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 180.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) As a respondent, you or your representative must submit any documentary evidence you want the suspending official to consider.

§ 180.745 How is fact-finding conducted?

(a) If fact-finding is conducted:

(1) You may present witnesses and other evidence and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes:

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information, and findings of fact, if any. The suspending official may extend that period for good cause.

§ 180.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of or during your suspension, the suspension may continue until the conclusion of those proceedings. However, a suspension may not exceed 12 months if proceedings are not initiated.

(b) The suspending official may extend the 12-month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other Federal, State, or local responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12-month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 180.800 What are the causes for debarment?

A Federal agency may debar a person for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, violating Federal criminal tax laws, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of a Federal agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or of any other agreement that resolves a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause that is so serious or compelling in nature that it affects your present responsibility.

§ 180.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 180.615, advising you:

(a) That the debarring official is considering debarring you;

(b) The reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) The cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;

(d) The applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing debarment; and

(e) The government-wide effect of a debarment from procurement and nonprocurement programs and activities.

§ 180.810 When does a debarment take effect?

Unlike a suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 180.815 How may I contest a proposed debarment?

As a respondent, if you wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.820 How much time do I have to contest a proposed debarment?

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

§ 180.825 What information must I provide to the debarring official if I contest the proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent, your submission to the debarring official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

§ 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the debarring official determines that:

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 180.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you, as a respondent, to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision on whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 180.840 How is fact-finding conducted?

(a) If fact-finding is conducted:

(1) You may present witnesses and other evidence and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 180.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 180.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes:

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.850 What is the standard of proof in a debarment action?

(a) In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 180.855 Who has the burden of proof in a debarment action?

(a) The Federal agency has the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 180.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not government-wide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or implemented remedial or protective measures in the form of procedures, policies, and programs to effectively address the activity cited as a basis for the debarment.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.

(t) Other factors that are appropriate to the circumstances of a particular case.

§ 180.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 180.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information, and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 180.615, that the official decided either:

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulations (48 CFR chapter 1) throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 180.875 May I ask the debarring official to reconsider a decision to debar me?

Yes. As a debarred person, you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must submit your request in writing and support it with documentation.

§ 180.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on:

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ 180.885 May the debarring official extend a debarment?

(a) Yes. The debarring official may extend a debarment for an additional period if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F, to extend the debarment.

Subpart I—Definitions

§ 180.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 180.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has

the power to control both. The ways a Federal agency may determine control include, but are not limited to:

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity organized following the exclusion of a person with the same or similar management, ownership, or principal employees as the excluded person.

§ 180.910 Agent or representative.

Agent or representative means any person who acts on behalf of or who is authorized to commit a participant in a covered transaction.

§ 180.915 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, or other disposition which creates a civil liability for the complained of wrongful acts or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

§ 180.920 Conviction.

Conviction means:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ 180.925 Debarment.

Debarment means an action taken by a debarring official under Subpart H to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1). A person so excluded is debarred.

§ 180.930 Debarring official.

Debarring official means a Federal agency official who is authorized to impose debarment. A debarring official is either:

(a) The agency head; or

(b) An official designated by the agency head.

§ 180.935 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368), and Executive Order 11738 (38 FR 25161).

§ 180.940 Excluded or exclusion.

Excluded or exclusion means:

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ 180.945 System for Award Management (SAM.gov) Exclusions.

System for Award Management (SAM.gov) Exclusions means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about ineligible persons.

§ 180.950 Federal agency.

Federal agency means any United States executive department, military department, defense agency, or any other executive branch agency. For the purposes of this part, other agencies of the Federal Government are not considered ''agencies'' unless they issue regulations adopting the government-wide Debarment and Suspension system under Executive Orders 12549 and 12689.

§ 180.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense will be given the same effect as an indictment.

§ 180.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 180.965 Legal proceedings.

Legal proceeding means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 180.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to, the following:

(1) Grants;

(2) Cooperative agreements;

(3) Scholarships;

(4) Fellowships;

(5) Contracts of assistance;

(6) Loans;

(7) Loan guarantees;

(8) Subsidies;

(9) Insurances;

(10) Payments for specified uses; and

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 180.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by email or facsimile. (See § 180.615.)

§ 180.980 Participant.

Participant means any person who submits a proposal for or enters into a covered transaction, including an agent or representative of a participant.

§ 180.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, regardless of how organized.

§ 180.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 180.995 Principal.

Principal means:

(a) An officer, director, owner, partner, principal investigator, or another person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who:

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of

substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ 180.1000 Respondent.

Respondent means a person against whom a Federal agency has initiated a debarment or suspension action.

§ 180.1005 State.

(a) *State* means:

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a State.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 180.1010 Suspending official.

(a) *Suspending official* means a Federal agency official authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

§ 180.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1) for a temporary period, pending completion of a Federal agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ 180.1020 Voluntary exclusion or voluntarily excluded.

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have a government-wide effect.

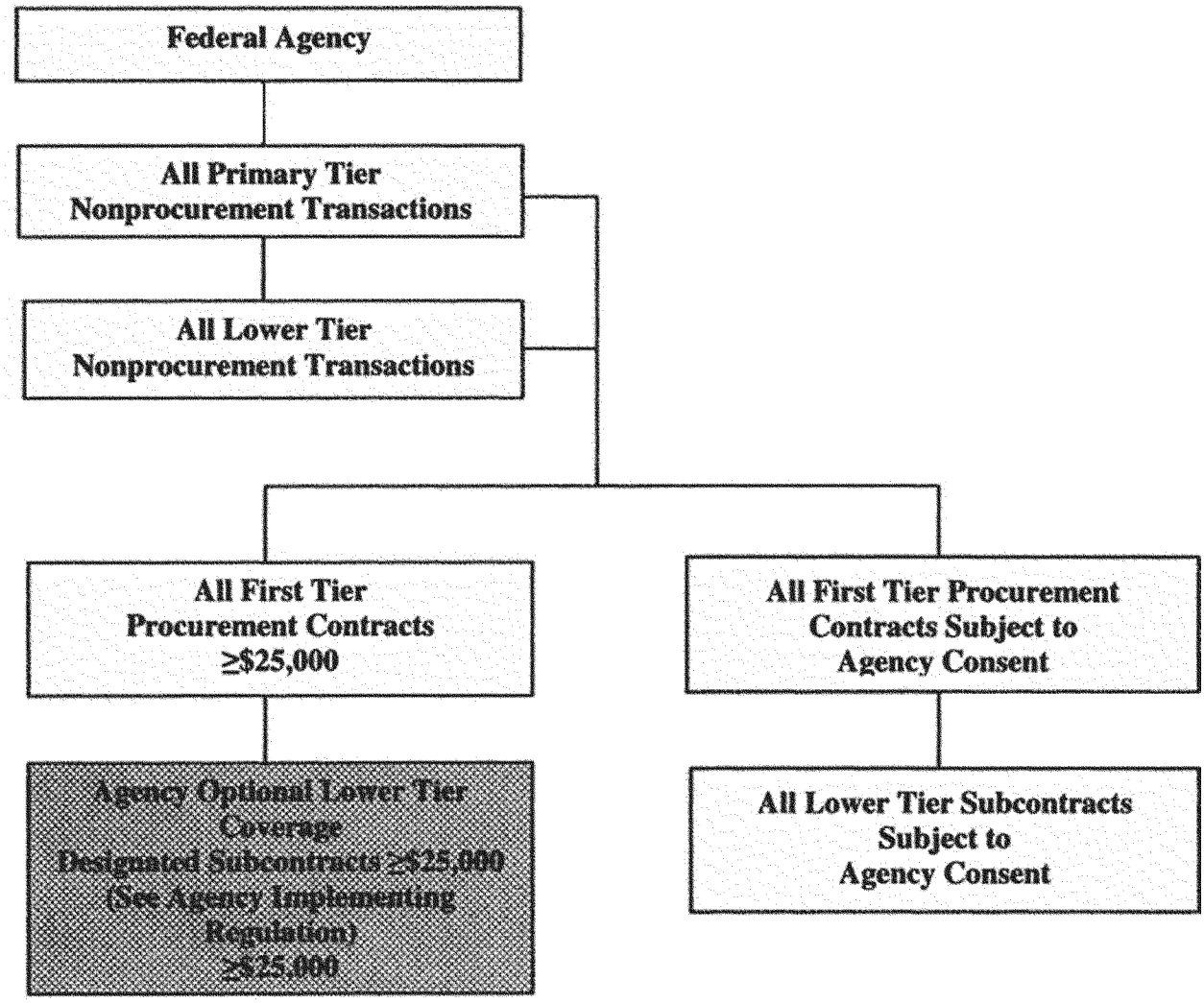
(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Appendix A to Part 180—Covered Transactions

BILLING CODE 3110–01–P

Appendix to Part 180___- Covered Transactions

COVERED TRANSACTIONS



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■ 8. Revise part 182 to read as follows:

PART 182—GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Authority: 41 U.S.C. 8101–8106; 31 U.S.C. 503; 31 U.S.C. 6307.

§ 182.5 What does this part do?

This part provides guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101–8106, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 182.10 How is this part organized?

This part is organized into two segments.

(a) Sections 182.5 through 182.40 contain general policy direction for Federal agencies' use of the uniform policies and procedures in subparts A through F.

(b) Subparts A through F contain uniform government-wide policies and procedures for Federal agency use to specify the:

(1) Types of awards that are covered by drug-free workplace requirements;

(2) Drug-free workplace requirements with which a recipient must comply;

(3) Actions required of a Federal agency awarding official; and

(4) Consequences of a violation of drug-free workplace requirements.

§ 182.15 To whom does the guidance apply?

This part provides guidance to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of this guidance governs the rights and responsibilities of other persons affected by the drug-free workplace requirements.

§ 182.20 What must a Federal agency do to implement the guidance?

To comply with the requirement in 41 U.S.C. 8106 for government-wide regulations, each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace requirements in subparts A through F of the guidance must issue a regulation consistent with those subparts.

§ 182.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish drug-free workplace policies and procedures for that Federal agency's Federal awards consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect on that Federal agency's awards.

(b) Must address some matters for which the guidance in this part gives the Federal agency discretion. Specifically, the regulation must:

(1) State whether the Federal agency:

(i) Has a central point to which a recipient may send the notification of a conviction that is required under § 182.225(a) or § 182.300(b); or

(ii) Requires the recipient to send the notification to the Federal agency awarding official or their designee for each Federal award.

(2) Either:

(i) State that the Federal agency head is the official authorized to determine under § 182.500 or § 182.505 that a recipient has violated the drug-free workplace requirements; or

(ii) Provide the title of the official designated to make that determination.

(c) May also, at the Federal agency's option, identify any specific types of financial assistance awards, in addition to grants and cooperative agreements, to which the Federal agency makes this guidance applicable.

§ 182.30 Where does a Federal agency implement the guidance?

Each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace guidance in this part must issue a regulation implementing the guidance within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 182.40 How is the guidance maintained?

The OMB publishes proposed changes to the guidance in the **Federal Register** for public comment, considers comments with the help of appropriate interagency working groups, and then issues any changes to the guidance in final form.

Subpart A—Purpose and Coverage

§ 182.100 How is this part written?

(a) This part uses a ''plain language'' format to make it easier for the general public and business community to use and understand. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as ''I'' and ''you,'' change from subpart to subpart depending on the audience being addressed.

§ 182.105 Do terms in this part have special meanings?

This part uses terms that have special meanings. Those terms are defined in subpart F.

§ 182.110 What do subparts A through F of this part do?

Subparts A through F specify standard policies and procedures to carry out the Drug-Free Workplace Act of 1988 for financial assistance awards.

§ 182.115 Does this part apply to me?

(a) Portions of this part apply to you if you are either:

(1) A recipient of a Federal assistance award (see definitions of award and recipient in §§ 182.605 and 182.660, respectively); or

(2) A Federal agency awarding official.

(b) The following table shows the subparts that apply to you:

If you are * * *	See subparts * * *
(1) a recipient who is not an individual.	A, B and E.
(2) a recipient who is an individual.	A, C and E.

If you are * * *	See subparts * * *
(3) a Federal agency awarding official.	A, D and E.

§ 182.120 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award to which the Federal agency head, or their designee, determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 182.125 Does this part affect the Federal contracts that I receive?

This part will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 182.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in Chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 182.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to:

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 182.205 through 182.220); and

(2) Take actions concerning employees convicted of violating drug statutes in the workplace (see § 182.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 182.230).

§ 182.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, the employee:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if the employee is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 182.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 182.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 182.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 182.205 and an ongoing awareness program as described in § 182.215, you must publish the statement and establish the program by the time given in the following table:

If * * *	Then you * * *
(a) The performance period of the award is less than 30 days	Must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more	Must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	May ask the Federal agency awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the Federal agency awarding official.

§ 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 182.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must:

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every Federal agency awarding official or their designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either:

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State, or local health, law enforcement, or another appropriate agency.

§ 182.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Federal agency award. A failure to do so is a violation of your drug-free workplace

requirements. You may identify the workplaces:

(1) To the Federal agency awarding official that is making the Federal award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the Federal award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

(b) Your workplace identification for a Federal award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (for example, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Federal agency awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the Federal award, you must inform the Federal agency awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 182.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a Federal award, if you are an individual recipient, you must agree that:

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the Federal award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any Federal award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Federal agency awarding official or their designee for each Federal award that you currently have, unless the agency designates a central point for the receipt of the notices, either in the award document or its regulation implementing the guidance in this part. When notice is made to a central point, it must include the identification number(s) of each affected Federal award.

Subpart D—Responsibilities of Federal Agency Awarding Officials

§ 182.400 What are my responsibilities as a Federal agency awarding official?

As a Federal agency awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in:

(a) Subpart B, if the recipient is not an individual; or

(b) Subpart C, if the recipient is an individual.

Subpart E—Violations of This Part and Consequences

§ 182.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Federal agency head or their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart B; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good-faith effort to provide a drug-free workplace.

§ 182.505 How are violations of this part determined for recipients who are individuals?

A recipient who is an individual is in violation of the requirements of this part if the Federal agency head or their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart C; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 182.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the Federal agency may take one or more of the following actions:

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under the Federal agency's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180) for a period not to exceed five years.

§ 182.515 Are there any exceptions to those actions?

For a particular award, the Federal agency head may waive, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 182.605 Award.

Award means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the government-wide rule that implements OMB Circular A–102 (for availability of OMB circulars, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (that is, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 182.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 182.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 182.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 182.650), except that substantial involvement is expected between the Federal agency and the

recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 182.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 182.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689).

§ 182.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 182.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including:

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance o' the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (for example, volunteers, even if used to meet a cost sharing requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 182.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government-controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 182.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 182.655 Individual.

Individual means a natural person.

§ 182.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency), or legal entity, regardless of how it is organized, that receives an award directly from a Federal agency.

§ 182.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 182.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689). Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

■ 9. Revise part 183 to read as follows:

PART 183—NEVER CONTRACT WITH THE ENEMY

Sec.

Authority: Pub. L. 113–291, as amended by Pub. L. 115–232, Pub. L. 116–92, Pub. L. 116–283, Pub. L. 117–263; 31 U.S.C. 503; 31 U.S.C. 6307.

§ 183.5 Purpose of this part.

This part provides guidance to Federal agencies on the implementation of the Never Contract with the Enemy requirements applicable to certain grants and cooperative agreements, as specified in subtitle E, title VIII of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291), as amended by Sec. 820 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263), hereafter cited as ''Never Contract with the Enemy'').

§ 183.10 Applicability.

(a) This part applies only to grants and cooperative agreements that are expected to exceed $50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of this part are applicable until the date of expiration as provided in law.

§ 183.15 Responsibilities of Federal agencies.

(a) Prior to making an award for a covered grant or cooperative agreement (see also § 183.35), the Federal agency must check the current list of prohibited or restricted persons or entities in the System for Award Management (*SAM.gov*) Exclusions.

(b) The Federal agency may include the award term provided in appendix A in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy.

(c) A Federal agency may become aware of a person or entity that:

(1) Provides funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency directly or indirectly to covered persons or entities; or

(2) Fails to exercise due diligence to ensure that no funds, including goods

and services, received under an executive agency's covered grant or cooperative agreement are provided directly or indirectly to covered persons or entities.

(d) When a Federal agency becomes aware of such a person or entity, it may do any of the following actions:

(1) Restrict the future award of all Federal contracts, grants, and cooperative agreements to the person or entity based upon concerns that Federal awards to the entity would provide grant funds directly or indirectly to a covered person or entity.

(2) Terminate any grant, cooperative agreement, or contract to a covered person or entity upon becoming aware that the recipient has failed to exercise due diligence to ensure that no award funds are provided directly or indirectly to a covered person or entity.

(3) Void in whole or in part any grant, cooperative agreement, or contracts of the executive agency concerned upon a written determination by the head of contracting activity or another appropriate official that the grant or cooperative agreement provides funds directly or indirectly to a covered person or entity.

(e) The Federal agency must notify recipients in writing regarding its decision to restrict all future awards, terminate or void a grant or cooperative agreement, or both. The agency must also notify the recipient in writing about the recipient's right to request an administrative review (using the agency's procedures) of the restriction, termination, or void of the grant or cooperative agreement within 30 days of receiving notification.

§ 183.20 Reporting responsibilities of Federal agencies.

(a) If a Federal agency restricts all future awards to a covered person or entity, it must enter information on the ineligible person or entity into *SAM.gov* Exclusions as a prohibited or restricted source pursuant to Never Contract with the Enemy.

(b) When a Federal agency terminates or voids a grant or cooperative agreement due to Never Contract with the Enemy, it must report the action as a termination for material failure to comply in *SAM.gov.* Federal agencies must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov.*

(c) The Federal agency must document and report to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies):

(1) Any action to restrict all future awards or to terminate or void an award with a covered person or entity.

(2) Any decision not to restrict all future awards, terminate, or void an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source.

(d) Each report referenced in paragraph (c)(1) of this section must include the following:

(1) The executive agency taking such action.

(2) An explanation of the basis for the action taken.

(3) The value of the terminated or voided grant or cooperative agreement.

(4) The value of all grants and cooperative agreements of the executive agency with the person or entity concerned at the time the grant or cooperative agreement was terminated or voided.

(e) Each report referenced in paragraph (c)(2) of this section must include the following:

(1) The executive agency concerned.

(2) An explanation of the basis for not taking the action.

(f) For each instance in which an executive agency exercised the additional authority to examine recipient and lower tier entity (for example, subrecipient or contractor) records, the agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following:

(1) An explanation of the basis for the action taken; and

(2) A summary of the results of any examination of records.

§ 183.25 Responsibilities of recipients.

(a) Recipients of covered grants or cooperative agreements must fulfill the requirements outlined in the award term provided in Appendix A to this part.

(b) Recipients must also flow down the provisions in award terms covered in Appendix A to this part to all contracts and subawards under the award.

§ 183.30 Access to records.

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.35) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal agency may only exercise this authority upon a written determination by the Federal agency that relies on a finding by the commander of a covered combatant command that there is reason to believe that funds, including supplies and services, received under the grant or cooperative agreement may have been provided directly or indirectly to a covered person or entity.

§ 183.35 Definitions.

Terms used in this part are defined as follows:

Contingency operation, as defined in 10 U.S.C. 101(a)(13), means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301(a), 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 3713 or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered combatant command means the following:

(1) The United States Africa Command.

(2) The United States Central Command.

(3) The United States European Command.

(4) The United States Pacific Command.

(5) The United States Southern Command.

(6) The United States Transportation Command.

Covered grant or cooperative agreement means a grant or cooperative agreement, as defined in 2 CFR 200.1 with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. Except for U.S. Department of Defense grants and cooperative agreements that were awarded on or before December 19, 2017, that will be performed in the United States Central Command, where the estimated value is in excess of $100,000.

Covered person or entity means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

Appendix A to Part 183—Award Terms for Never Contract With the Enemy

Federal agencies may include the following award terms in all awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

I. Term 1—Prohibition on Providing Funds to the Enemy

(a) You must:

(1) Exercise due diligence to ensure that no funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR 180.300 prior to issuing a subaward or contract and;

(2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in the System for Award Management (*SAM.gov*) as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal agency provides written approval to continue the subaward or contract.

(b) You may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(c) The Federal agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal agency becomes aware that you have failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(End of term)

II. Term 2—Additional Access to Recipient Records

(a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any of your records and the records of your subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017, that will be performed in the United States Central Command (USCENTCOM) theater of operations.

(b) The substance of this clause, including this paragraph (b), must be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(End of term)

■ 10. Revise the authority citation for part 200 to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 6101–6106; 31 U.S.C. 6307; 31 U.S.C. 7501–7507.

■ 11. Amend part 200 by revising subparts A through F to read as follows:

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions

Acronyms

Sec.

Subpart B—General Provisions

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Subpart D—Post Federal Award Requirements

Property Standards

Procurement Standards

Performance and Financial Monitoring and Reporting

Subrecipient Monitoring and Management

Record Retention and Access

Subpart A—Acronyms and Definitions

Acronyms

§ 200.0 Acronyms.

(a) CAS Cost Accounting Standards
(b) CFR Code of Federal Regulations
(c) F&A Facilities and Administration
(d) FAC Federal Audit Clearinghouse
(e) FAIN Federal Award Identification Number
(f) FAR Federal Acquisition Regulation
(g) FASB Financial Accounting Standards Board
(h) FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109–282, as amended by section 6202(a) of Public Law 110–252; section 3 of Public Law 113–101; section 2(a) of Public Law 117–40 (See 31 U.S.C. 6101, statutory note)
(i) FOIA Freedom of Information Act
(j) FR Federal Register
(k) GAAP Generally Accepted Accounting Principles
(l) GAGAS Generally Accepted Government Auditing Standards
(m) GASB Government Accounting Standards Board
(n) GAO Government Accountability Office
(o) GSA General Services Administration
(p) IBS Institutional Base Salary
(q) IHE Institutions of Higher Education
(r) IRC Internal Revenue Code
(s) ISDEAA Indian Self-Determination and Education and Assistance Act
(t) MTC Modified Total Cost
(u) MTDC Modified Total Direct Cost
(v) NFE Non-Federal Entity
(w) NOFO Notice of Funding Opportunity
(x) OMB Office of Management and Budget
(y) PII Personally Identifiable Information
(z) PMS Payment Management System
(aa) SAM System for Award Management (*SAM.gov*)

(bb) UEI Unique Entity Identifier
(cc) U.S.C. United States Code
(dd) VAT Value Added Tax

§ 200.1 Definitions.

The following is a list of definitions of key terms frequently used in 2 CFR part 200. Definitions found in Federal statutes or regulations that apply to particular programs take precedence over the following definitions. However, where the following definitions implement specific statutory requirements that apply government-wide, such as the Single Audit Act, the following definitions take precedence over Federal regulations. For purposes of this part, the following definitions apply—

Acquisition cost means the (total) cost of the asset including the cost to ready the asset for its intended use. For example, acquisition cost for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software include those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

Advance payment means a payment that a Federal agency or pass-through entity makes by any appropriate payment mechanism and payment method before the recipient or subrecipient disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Assistance Listings refer to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration (GSA) at *SAM.gov.*

Assistance Listing number means a unique number assigned to identify an Assistance Listing.

Assistance Listing program title means the title that corresponds to the Assistance Listing number.

Audit finding means deficiencies which the auditor is required to report in the schedule of findings and questioned costs. (See § 200.516(a))

Auditee means any non-Federal entity that must be audited under this part. (See § 200.501)

Auditor means an auditor who is a public accountant or a Federal, State, local government, or Indian Tribe audit organization that meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the Federal award that the Federal agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal agency or pass-through entity.

Budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion, during which recipients and subrecipients are authorized to incur financial obligations of the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

Capital assets means:

(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(i) Land, buildings (facilities), equipment, and intellectual property (including software), whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

(ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

(2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property or equipment for a period of time under a lease contract. See § 200.465.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State, local government, or Indian Tribe to its departments and agencies on a centralized basis. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of recipient or group of recipients to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are defined by OMB in the compliance supplement or designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating ''other clusters,'' a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.332. A cluster of programs must be considered one program when determining major programs as described in § 200.518, and with the exception of R&D as described in § 200.501(d), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the

cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies, see the following:

(1) For Institutions of Higher Education (IHEs): Appendix III, paragraph C.11.

(2) For nonprofit organizations: Appendix IV, paragraph C.2.a.

(3) For State and local governments: Appendix V, paragraph F.1.

(4) For Indian Tribes: Appendix VII, paragraph D.1.

Compliance supplement means an annually updated authoritative source of information for auditors that identifies existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

Computing devices means machines that acquire, store, analyze, process, and publish data and other information electronically, including accessories (or ''peripherals'') for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of *subaward* in this section.

Contractor means an entity that receives a contract.

Continuation funding means a discretionary decision by a Federal agency to fund a second or subsequent budget period within the period of performance.

Cooperative agreement means a legal instrument of financial assistance between a Federal agency or pass-through entity and a recipient or subrecipient that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal agency in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means a central service or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, and capital projects. A cost objective may be a major function of the recipient or subrecipient, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

Cost sharing means the portion of project costs not paid by Federal funds or contributions (unless authorized by Federal statute). This term includes *matching,* which refers to required levels of cost share that must be provided. See § 200.306.

Disallowed cost means charges to a Federal award that the Federal agency or pass-through entity determines to be unallowable.

Discretionary award means an award in which the Federal agency, in keeping with specific statutory authority that enables the agency to exercise judgment (''discretion''), selects the recipient or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or $10,000. See this section's definitions of *capital assets, computing devices, general purpose equipment, information technology systems, special purpose equipment,* and *supplies.*

Expenditures means charges made by a recipient or subrecipient to a Federal award.

(1) The charges may be reported on a cash or accrual basis as long as the methodology is disclosed and consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the recipient or subrecipient for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees; and

(C) Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

Federal agency has the meaning in paragraph (2) of this definition unless the context clearly indicates that the more general meaning in paragraph (1) of this definition is intended:

(1) An ''agency'' as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f); or

(2) An ''agency'' as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f) that provides a Federal award directly to a recipient.

See also definitions of Federal award and recipient.

Federal Audit Clearinghouse (FAC) means the repository of record

designated by OMB where non-Federal entities must transmit the information required by subpart F.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a recipient receives directly from a Federal agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal agency or indirectly from a pass-through entity, as described in § 200.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate government-owned, contractor-operated (GOCO) facilities.

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the authorized official of the Federal agency signed (physically or digitally) the Federal award or when an alternative binding agreement, consistent with the requirements of 31 U.S.C. 1501, is reached with the recipient.

Federal financial assistance means:

(1) Assistance that recipients or subrecipients receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).

(2) For § 200.203 and subpart F of this part, *Federal financial assistance* also includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) For § 200.216, Federal financial assistance includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Loans; and

(iv) Loan Guarantees.

(4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

Federal interest means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single Assistance Listings Number.

(2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) ''Other clusters,'' as described in the definition of *cluster of programs* in this section. *Federal share* means the portion of the Federal award costs paid using Federal funds.

Final cost objective means a cost objective that has allocated to it both direct and indirect costs and, in the recipient's or subrecipient's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a recipient or subrecipient. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

Financial obligations means orders placed for property and services, contracts and subawards made, and similar transactions that require payment by a recipient or subrecipient under a Federal award that result in expenditures by a recipient or subrecipient under a Federal award.

Fixed amount award means a type of grant or cooperative agreement pursuant to which the Federal agency or pass-through entity provides a specific amount of funding without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the recipient or subrecipient and the Federal agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.

For-profit organization generally means an organization or entity organized for the purpose of earning a profit. The term includes but is not limited to:

(1) An ''S corporation'' incorporated under Subchapter S of the Internal Revenue Code;

(2) A corporation incorporated under another authority;

(3) A partnership;

(4) A limited liability company or partnership; and

(5) A sole proprietorship.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax-exempt under the laws of the country where it is registered and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, an organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a foreign public entity.

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

General purpose equipment means equipment that is not limited to research, medical, scientific, or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

Generally accepted accounting principles (GAAP) has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

Generally accepted government auditing standards (GAGAS), also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which apply to financial audits.

Grant agreement or grant means a legal instrument of financial assistance between a Federal agency or pass-through entity and a recipient or subrecipient that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship, the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal agency in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(vi) A loan guarantee; or

(v) Insurance.

Highest-level owner means the entity that owns or controls an immediate owner of an applicant or that owns or controls one or more entities that control an immediate owner of an applicant. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204–17).

Hospital means a facility licensed as a hospital under the law of any State or a facility operated as a hospital by the United States, a State, or a subdivision of a State.

Improper payment means a payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. The term improper payment includes: any payment to an ineligible recipient; any payment for an ineligible good or service; any duplicate payment; any payment for a good or service not received, except for those payments where authorized by law; any payment that is not authorized by law; and any payment that does not account for credit for applicable discounts. See OMB Circular A–123 Appendix C, *Requirements for Payment Integrity Improvement* for additional definitions and guidance on the requirements for payment integrity.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). This includes any Indian Tribe identified in the annually published Bureau of Indian Affairs list of ''*Indian Entities Recognized and Eligible to Receive Services*'' and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

Indirect (facilities & administrative (F&A)) cost means those costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served. Indirect cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a recipient to substantiate its request to establish an indirect cost rate as described in appendices III through VII and Appendix IX to this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of *computing devices* and *equipment* in this section.

Institution of Higher Education (IHE) is defined at 20 U.S.C. 1001.

Intangible property means property having no physical existence, such as trademarks, copyrights, data (including data licenses), websites, IP licenses, trade secrets, patents, patent applications, and property such as loans, notes and other debt instruments, lease agreements, stocks and other instruments of property ownership of either tangible or intangible property ownership, such as intellectual property, software, or software subscriptions/licenses. *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See this section's definitions of *cost objective* and *final cost objective.*

Internal control for recipients and subrecipients means:

(1) Processes designed and implemented by recipients and subrecipients to provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) Effectiveness and efficiency of operations;

(ii) Reliability of reporting for internal and external use; and

(iii) Compliance with applicable laws and regulations.

Key Personnel means any individuals (including employees and contractors) working under a Federal award that are designated in the Federal award as being particularly integral or meaningful to the program.

Loan means a Federal loan or loan guarantee received or administered by a recipient, except as used in this section's definition of *program income.*

(1) The term ''direct loan'' means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term ''direct loan obligation'' means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term ''loan guarantee'' means any Federal Government guarantee, insurance, or other pledges for the payment of all or a part of the principal or interest on any debt obligation of a

non-Federal borrower to a non-Federal lender but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term ''loan guarantee commitment'' means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a State, including a:

(1) County;
(2) Borough;
(3) Municipality;
(4) City;
(5) Town;
(6) Township;
(7) Parish;
(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
(9) Special district;
(10) School district;
(11) Intrastate district;
(12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
(13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 200.503(e).

Management decision means the Federal agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings based on its evaluation of the audit findings and proposed corrective actions.

Micro-purchase means an individual procurement transaction for supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a recipient's or subrecipient's small purchases using informal procurement methods as set forth in § 200.320.

Micro-purchase threshold means the dollar amount at or below which a recipient or subrecipient may purchase property, or services using micro-purchase procedures (see § 200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the recipient or subrecipient and approved by the cognizant agency for indirect costs.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs, and the portion of each subaward in excess of $50,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs and with the approval of the cognizant agency for indirect costs.

Non-discretionary award means an award made by the Federal agency to specific recipients in accordance with statutory, eligibility, and compliance requirements, such that in keeping with specific statutory authority, the Federal agency has cannot exercise judgment (''discretion''). A non-discretionary award amount could be specifically determined or by formula.

Non-Federal entity (NFE) means a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any organization that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
(2) Is not organized primarily for profit;
(3) Uses net proceeds to maintain, improve, or expand the organization's operations; and
(4) Is not an IHE.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal agency. The notice of funding opportunity provides information on the award, such as who is eligible to apply, the evaluation criteria for selecting a recipient or subrecipient, the required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or some other term.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a recipient or subrecipient unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the recipient or subrecipient, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal agency that is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

Participant generally means an individual who is not a recipient or subrecipient staff member or consultant, or an individual who is developing or leading the implementation of the Federal award; but rather attending, benefitting from, or is otherwise playing a role in the overall program activities. Examples include, community members participating in a community outreach program, members of the public whose perspectives or input are sought as part of a program, exchange students, or conference attendees.

Participant support costs means direct costs that support participants and their involvement in a Federal award, such as stipends, subsistence allowances, travel allowances, registration fees, dependent care, and per diem paid directly to or on behalf of participants.

Pass-through entity means a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program.

Performance goal means a measurable target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (for example, discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time during which the recipient and subrecipient must perform and complete the work authorized under the Federal award. It is the time interval between the start and end date of a Federal award, which may include one or more funded portions or budget

periods. The period of performance does not commit the Federal agency to fund the award beyond the currently approved budget period.

Personal property means property other than real property. It may be tangible or intangible.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some PII is available in public sources such as telephone books, websites, and university listings. This type of information is considered Public PII. Public PII includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not attached to any single category of information or technology. Instead, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that could be used to identify an individual when combined with other available information.

Prior approval means the written approval by an authorized official of a Federal agency or pass-through entity of certain costs or programmatic decisions.

Program income means gross income earned by the recipient or subrecipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(c). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See § 200.407. See also 35 U.S.C. 200–212 ''Disposition of Rights in Educational Awards,'' which applies to inventions made under Federal awards.

Project cost means total allowable costs incurred under a Federal award and all cost sharing, including third-party contributions.

Property means real property or personal property. See this section's definitions of *real property* and *personal property.*

Protected Personally Identifiable Information (Protected PII) means an individual's first name or first initial and last name in combination with any one or more type of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This definition does not include PII that must be disclosed by law. See this section's definition of *Personally Identifiable Information (PII).*

Questioned cost has the meaning given in paragraphs (1) through (3).

(1) *Questioned cost* means an amount, expended or received from a Federal award, that in the auditor's judgment:

(i) Is noncompliant or suspected noncompliant with Federal statutes, regulations, or the terms and conditions of the Federal award;

(ii) At the time of the audit, lacked adequate documentation to support compliance; or

(iii) Appeared unreasonable and did not reflect the actions a prudent person would take in the circumstances.

(2) The questioned cost amount under (1)(ii) is calculated as if the portion of a transaction that lacked adequate documentation were confirmed noncompliant.

(3) There is no questioned cost solely because of:

(i) Deficiencies in internal control; or

(ii) Noncompliance with reporting requirements if this noncompliance does not affect the amount expended or received from the Federal award.

(4) *Known questioned cost* means a questioned cost specifically identified by the auditor. Known questioned costs are a subset of likely questioned costs.

(5) *Likely questioned cost* means the auditor's best estimate of total questioned costs, not just the known questioned costs. Likely questioned costs are developed by extrapolating from audit evidence obtained, for example, by projecting known questioned costs identified in an audit sample to the entire population from which the sample was drawn. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the likely questioned costs, not just the known questioned costs.

Real property means land, including land improvements, structures, appurtenances thereto, and legal interests in land such as a fee title, licenses, rights of way, easements, but excludes moveable machinery and equipment.

Recipient means an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants and beneficiaries of the award.

Renewal award means an award made after the expiration of a Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. The start date of a renewal award begins a new and distinct period of performance.

Research and Development (R&D) means all basic and applied research activities and all development activities performed by a recipient or subrecipient. The term research also includes activities involving the training of individuals in research techniques where such activities use the same facilities as other research and development activities and where such activities are not included in the instruction function. ''Research'' is the systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research to produce useful materials, devices, systems, or methods, including designing and developing prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a recipient or subrecipient may purchase property or services using small purchase methods (see § 200.320). Recipients and subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold set in the FAR at 48 CFR part 2, subpart 2.1 is used in this part as the simplified acquisition threshold for secondary procurement activities administered under Federal awards. The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, based on internal controls, an evaluation of risk, and its documented procurement procedures. Recipients and subrecipients should also determine if local government purchasing laws apply. This threshold must never exceed the dollar value established in the FAR.

Special purpose equipment means equipment that is used only for research, medical, scientific, or other

technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, spectrometers, and associated software. See also the definitions of *equipment* and *general purpose equipment* in this section.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070–1099d), which the U.S. Department of Education administers, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or to an individual that is a Federal program beneficiary. A subaward may be provided through any legal agreement, including an agreement the pass-through entity considers a contract.

Subrecipient means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. It does not include an individual that is a Federal program beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.

Subsidiary means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

Supply means all tangible personal property other than those described in the *equipment* definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes or $10,000, regardless of the length of its useful life. See this section's definitions of *computing devices* and *equipment.*

Telecommunications cost means the cost of using communication technologies such as mobile phones, landlines, and the internet.

Termination means the action a Federal agency or pass-through entity takes to discontinue a Federal award, in whole or in part at any time before the planned end date of the period of performance. Termination does not include discontinuing a Federal award (for example, not issuing continuation funding which is at the discretion of a Federal agency), or a lack of available funds.

Third-party in-kind contributions means the value of non-cash contributions (*meaning,* property or services) that:

(1) Benefit a federally-assisted project or program Federal award; and

(2) Are contributed by non-Federal third parties, without charge, to a recipient or subrecipient under a Federal award.

Unliquidated financial obligation means financial obligations incurred by the recipient or subrecipient but not paid (liquidated) for financial reports prepared on a cash basis. For reports prepared on an accrual basis, these are financial obligations incurred by the recipient or subrecipient but not recorded.

Unobligated balance means the amount of funds under a Federal award that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated financial obligations and expenditures under the Federal award from the cumulative amount of funds the Federal agency or pass-through entity authorized the recipient or subrecipient to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged voluntarily in the proposal's budget on the part of the recipient or subrecipient, which becomes a binding requirement of the Federal award. See § 200.306.

Subpart B—General Provisions

§ 200.100 Purpose.

(a) *Purpose.* (1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards. Federal agencies must not impose additional requirements except as allowed in §§ 200.102, 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides Federal agencies with the policy for collecting and submitting information on all Federal financial assistance programs to the Office of Management and Budget (OMB) and communicating this information to the public. It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It also sets forth how the General Services Administration (GSA), OMB, and Federal agencies implement the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) *Administrative requirements.* Subparts B through D set forth the uniform administrative requirements for Federal financial assistance. This includes establishing requirements for Federal agencies management of Federal financial assistance programs before a Federal award is made, and requirements that Federal agencies may impose on recipients and subrecipients throughout the lifecycle of a Federal award.

(c) *Cost principles.* Subpart E establishes principles for determining allowable costs incurred by recipients and subrecipients under Federal awards. These principles are for the purpose of cost determination. They do not address the circumstances nor dictate the extent of Federal Government funding of a particular program or project.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F is issued pursuant to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507). Subpart F sets forth the standards for achieving consistency and uniformity among Federal agencies for the audit of non-Federal entities administering Federal awards. Subpart F also provides the policies and procedures for Federal agencies or pass-through entities when using the results of these audits.

§ 200.101 Applicability.

(a) *General applicability to Federal agencies.* (1) Subparts A through F apply to Federal agencies that make Federal awards to non-Federal entities.

(2) Federal agencies may apply subparts A through E to Federal agencies, for-profit organizations, foreign public entities, or foreign organizations as permitted in agency regulations or program statutes, except when a Federal agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the laws of a foreign government. If a Federal agency does not apply subpart E to for-profit organizations, the cost principles of the Federal Acquisition Regulations (FAR) will apply. Subpart F only applies to non-Federal entities as defined in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507). Federal agencies should apply the requirements to all recipients in a consistent and equitable manner to the

extent permitted within applicable statutes, regulations, and policies.

(b) *Applicability to different types of Federal awards.* (1) Throughout subparts A through F, the word ''must'' indicates a requirement. The word ''should'' or ''may'' indicates a recommended approach and permits discretion.

(2) Paragraphs (b)(3) through (6) of this section describe what portions of this part apply to specific types of Federal financial assistance. The terms and conditions of Federal awards and the requirements of this part flow down to subrecipients unless indicated otherwise in Federal statute, regulation, or the terms and conditions of the Federal award. Pass-through entities must comply with the requirements described in §§ 200.331 through 200.333, and any other sections directed toward pass-through entities.

(3) Subparts A and B *apply* to all Federal financial assistance with the following exceptions:

(i) Sections 200.111, 200.112, and 200.113 *do not apply* to agreements for loans, loan guarantees, interest subsidies, insurance, and procurement contracts under the FAR and subcontracts under those contracts.

(4) Subparts C and D *apply only* to grants and cooperative agreements with the following exceptions:

(i) Section 200.203 also *applies* to agreements for loans, loan guarantees, interest subsidies, and insurance;

(ii) Section 200.216 also applies to loans and loan guarantees; and

(iii) Sections 200.303 and 200.331 through 200.333 also *apply* to all types of Federal financial assistance.

(5) Subpart E *applies* to grants, cooperative agreements, and certain procurement contracts under the FAR but *does not apply* to the following:

(i) Grants and Cooperative Agreements providing food commodities;

(ii) Fixed Amount Awards;

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance;

(iv) Procurement contracts under the FAR that are not negotiated; and

(v) Federal awards to hospitals (See Appendix IX—Hospital Cost Principles)

(6) Subpart F *only applies* to the following:

(i) Grants and cooperative agreements (including fixed amount awards);

(ii) Contracts and subcontracts awarded under the FAR (except for fixed price contracts and subcontracts);

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance; and

(iv) Any other form of Federal financial assistance as defined by the Single Audit Act Amendment of 1996.

(c) *Federal award of a cost-reimbursement contract under the Federal Acquisition Regulations (FAR) to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract under the FAR, only subpart D, §§ 200.331 through 200.333, and subparts E and F are incorporated by reference into the contract. The requirements of subparts D, E, and F are supplementary to the FAR and the contract. In cases of conflict, the FAR and the terms and conditions of the contract awarded under the FAR shall prevail over the incorporated requirements from this part. When the Cost Accounting Standards (CAS) are applicable to the contract, they also take precedence over the incorporated requirements from this part. In addition, costs that are identified as unallowable under 41 U.S.C. 4304(a) and as stated in the FAR (48 CFR part 31, subpart 31.2, and 48 CFR 31.603) are always unallowable. For requirements other than those covered in subpart D, §§ 200.331 through 200.333, and subparts E and F, the terms of the contract and the FAR apply.

(d) *Governing provisions.* With the exception of subpart F, which is required by the Single Audit Act, Federal statutes or regulations govern in any circumstances where they conflict with the provisions of this part. For agreements with Indian Tribes, this includes the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended (see 25 U.S.C. 5301–5423.

(e) *Program applicability.* Except for §§ 200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C, D, and E do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that subpart E apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858).

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858).

(f) *Additional program applicability.* Except for §§ 200.203 and 200.216, the guidance in subpart C does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (Title IV–A of the Social Security Act, 42 U.S.C. 601–619);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Social Security Act, 42 U.S.C. 651–669b);

(iii) Federal Payments for Foster Care, Prevention, and Permanency (Title IV–E of the Act, 42 U.S.C. 670–679c);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (Title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State Medicaid Fraud Control program authorized by Section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (Title XXI of the Act, 42 U.S.C. 1397aa–1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (Section 4 of the Act, 42 U.S.C. 1753);

(ii) Commodity Assistance (Section 6 of the Act, 42 U.S.C. 1755);

(iii) Special Meal Assistance (Section 11 of the Act, 42 U.S.C. 1759a);

(iv) Summer Food Service Program for Children (Section 13 of the Act, 42 U.S.C. 1761); and

(v) Child and Adult Care Food Program (Section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (Section 3 of the Act, 42 U.S.C. 1772);

(ii) School Breakfast Program (Section 4 of the Act, 42 U.S.C. 1773); and

(iii) State Administrative Expenses (Section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (Section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (Section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (Section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

§ 200.102 Exceptions.

(a) *OMB exceptions.* Except for subpart F, OMB may allow either exceptions to or deviations from requirements of this part for classes of Federal awards, or of recipients, subrecipients, or both, when not prohibited by statute. For example, OMB may allow exceptions or deviations in support of innovative program designs or emergency situations. Deviation means applying more or less restrictive requirements to a class of Federal awards, recipients, or subrecipients.

(b) *Statutory exceptions.* When required by Federal statute, a Federal agency does not need OMB approval to allow exceptions to or deviations from requirements of this part (except for subpart F) for a class of Federal awards or recipients, subrecipients, or both.

(c) *Agency exceptions.* Federal agencies may allow exceptions to requirements of this part for individual Federal awards, or recipients, or subrecipients on a case-by-case basis when the exceptions are not prohibited by statute and OMB approval is not expressly required by this part. Only the cognizant agency for indirect costs may authorize exceptions related to cost allocation plans or indirect cost rate proposals. A Federal agency may also apply less restrictive requirements when issuing fixed amount awards (see § 200.1), except for those requirements imposed by statute or in subpart F.

§ 200.103 Authorities.

This part is issued under the following authorities.

(a) Subparts B through D are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management); the Federal Program Information Act (Pub. L. 95–220 and Pub. L. 98–169, as amended, codified at 31 U.S.C. 6101–6106); the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224, as amended, codified at 31 U.S.C. 6301–6309); 41 U.S.C. 1101–1131 (the Office of Federal Procurement Policy Act); Reorganization Plan No. 2 of 1970 and Executive Order 11541 (''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President''); and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507).

(b) Subpart E is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101–1126); the Chief Financial Officers Act of 1990 (31 U.S.C. 503–504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, ''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.'' OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

(c) Subpart F is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

§ 200.104 Supersession.

This part supersedes previous OMB guidance issued under Title 2, subtitle A, chapter I of the Code of Federal Regulations related to uniform administrative requirements, cost principles, and audit requirements for Federal awards.

§ 200.105 Effect on other issuances.

(a) *Superseding inconsistent requirements.* For Federal awards made subject to this part by a Federal agency, this part takes precedence over any administrative requirements, program manuals, handbooks, and other non-regulatory materials that are inconsistent with the requirements of those subparts upon implementation of this part by the Federal agency, except to the extent that they are required by statute or authorized in accordance with § 200.102.

(b) *Imposition of requirements on recipients.* Agencies may only impose legally binding requirements on recipients and subrecipients through:

(1) Notice and public comment procedures through an approved agency process, including as authorized by this part, other statutes, or regulations; or

(2) Incorporating requirements into the terms and conditions of a Federal award as permitted by Federal statute, regulation, or this part.

§ 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies, non-Federal entities, recipients, and subrecipients are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

§ 200.107 OMB responsibilities.

OMB will review Federal agency regulations and implementation of this part. OMB will provide interpretations of policy requirements and assistance to ensure effective, efficient, and consistent implementation. Any exceptions will be subject to approval by OMB and only with adequate justification from the Federal agency.

§ 200.108 Inquiries.

Inquiries from Federal agencies concerning this part may be directed to OMB. Inquiries from recipients or subrecipients should be addressed to the Federal agency, the cognizant agency for indirect costs, the cognizant agency for audit, or the pass-through entity as appropriate.

§ 200.109 Review date.

OMB will review this part periodically.

§ 200.110 Effective date.

(a) The standards set forth in this part affecting the administration of Federal awards by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date a newly re-negotiated rate goes into effect for the recipient's or subrecipient's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revisions to this part (as of the publication date for revisions to this guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

§ 200.111 English language.

(a) All Federal financial assistance announcements, applications, and Federal award information should be in the English language and must be in terms of U.S. dollars. However, Federal agencies, recipients, and subrecipients may issue or translate a Federal award

or other documents into another language. A Federal agency may translate formal or informal announcements of the availability of Federal funding through a financial assistance program, such as a notice of funding opportunity, when translations may serve to increase the pool of applicants or the participation of a specific community (for example, programs administered in foreign countries where the primary language is not English). There must be official controlling English versions of announcements and award documents.

(b) Applications, reports, and official correspondence may be submitted in languages other than English if specified in the notice of funding opportunity or the terms and conditions of the Federal award.

(c) In the event of inconsistency between English and another language, the English language meaning will control. When a significant portion of the recipient's or subrecipient's employees administering a Federal award are not fluent in English, the Federal award should be provided in English and the language(s) with which employees are more familiar.

§ 200.112 Conflict of interest.

Federal agencies must establish conflict of interest policies for Federal awards. A recipient or subrecipient must disclose in writing any potential conflict of interest to the Federal agency or pass-through entity in accordance with the established Federal agency policies.

§ 200.113 Mandatory disclosures.

An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever they have credible evidence of a violation of Federal criminal law potentially affecting the Federal award (for example, fraud, embezzlement, bribery, gratuity violations, identity theft, or sexual assault and exploitation) or a violation of the civil False Claims Act. (See also 2 CFR 175.105 regarding the obligation to report credible information related to conduct prohibited by the Trafficking Victims Protection Act, 22 U.S.C. 7104c). The disclosure must be made in writing to the Federal agency, pass-through entity (if applicable), and the agency's Office of Inspector General. Recipients and subrecipients are required to report matters related to recipient integrity and performance in accordance with Appendix XII of this part. Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 200.200 Purpose.

Sections 200.201 through 200.216 prescribe instructions and other pre-award matters to be used by Federal agencies in the program planning, announcement, application, and award processes.

§ 200.201 Use of grants, cooperative agreements, fixed amount awards, and contracts.

(a) *Federal awards.* The Federal agency or pass-through entity must decide on the appropriate type of agreement for a Federal award (for example, a grant, cooperative agreement, subaward, or contract) in accordance with this guidance. See the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6309).

(b) *Fixed amount awards.* The Federal agency or pass-through entity (see § 200.333) may use fixed amount awards (see *Fixed amount awards* in § 200.1) for which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed budget based on a reasonable estimate of actual costs. Accountability must be based on performance and results, which can be communicated in performance reports or through routine monitoring. Except in the case of termination before the completion of the Federal award, there is no review of the actual costs incurred by the recipient or subrecipient under the Federal award. Therefore, no financial reporting is required. This does not absolve the awardee from the record retention requirements contained in sections 200.334 through 200.338. Payments must be based on meeting specific requirements of the Federal award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments. The amount of each payment as well as the ''milestone'' or event triggering the payment, should be agreed to in advance and included in the Federal award;

(ii) On a unit price basis. The defined unit(s) or price(s) should be agreed to in advance and included in the Federal award; or

(iii) In one payment at the completion of the Federal award.

(2) A fixed amount award may not be used in programs that require mandatory cost sharing.

(3) A fixed amount award may generate and use program income in accordance with the terms and conditions of the Federal award; however, the requirements of § 200.307 do not apply.

(4) At the end of a fixed amount award, the recipient or subrecipient must certify in writing to the Federal agency or pass-through entity that the project was completed as agreed to in the Federal award and that all expenditures were incurred in accordance with § 200.403. When the required activities were not carried out, including fixed amount awards paid on a unit price basis under 200.201(b)(1)(ii), the amount of the Federal award must be reduced by the amount that reflects the activities that were not completed in accordance with the Federal award. When the required activities were completed in accordance with the terms and conditions of the Federal award, the recipient or subrecipient is entitled to any unexpended funds.

(5) Periodic reports may be established for fixed amount awards.

(6) Prior approval requirements that apply to fixed amount awards are § 200.308 (paragraphs 1 through 3, 6, and 10) and § 200.333.

§ 200.202 Program planning and design.

(a) The Federal agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. A program must be designed:

(1) With clear goals and objectives that provide meaningful results consistent with the Federal authorizing legislation of the program;

(2) To measure performance based on the goals and objectives developed during program planning and design. Performance measures may differ depending on the type of program. See § 200.301 for more information on performance measurement;

(3) To align with the strategic goals and objectives within the Federal agency's performance plan and should support the Federal agency's performance measurement, management, customer service initiatives, and reporting as required by Part 6 of OMB Circular A–11 (Preparation, Submission, and Execution of the Budget);

(4) To align with the Program Management Improvement Accountability Act (Pub. L. 114–264) as

well as the Foundations for Evidence-Based Policymaking Act (Pub. L. 115–435), as applicable; and

(5) To encourage the recipient to engage members of the community that will benefit from or be impacted by a program during the design phase, when practicable.

(b) Federal agencies should develop programs in consultation with communities benefiting from or impacted by the program. In addition, Federal agencies should consider available data and evaluation results from past programs and make every effort to extend eligibility requirements to all potential applicants. Federal agencies are encouraged to coordinate with other agencies during program planning and design, particularly when the goals and objectives of a program or project align with those of other agencies.

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal agency must maintain an accurate list of Federal programs in the Assistance Listings maintained by the General Services Administration (GSA) at *SAM.gov.*

(1) The Assistance Listings is the comprehensive government-wide source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal agency must submit to GSA for approval by OMB is listed in paragraph (b). GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal agency must assign the appropriate Assistance Listing before making the Federal award unless exigent circumstances require otherwise (for example, timing requirements imposed by a Federal statute).

(b) To the extent practicable, the Federal agency must create, update, and manage Assistance Listing entries based on the authorizing statute for the program and comply with additional guidance provided by GSA (in consultation with OMB) to ensure consistent and accurate information is available to prospective applicants. Assistance Listings should be communicated to the public in plain language. Accordingly, Federal agencies must submit the following information to GSA when creating an Assistance Listing:

(1) *Program Description, Purpose, Goals, and Measurement.* A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the program description, purpose, goals, and performance measurement should align with the strategic goals and objectives within the Federal agency's performance plan and should support the Federal agency's performance measurement, management, customer service initiatives, and reporting as required by Part 6 of OMB Circular A–11;

(2) *Identification.* Identification of whether the program will issue Federal awards on a discretionary or non-discretionary basis;

(3) *Projected total amount of funds available for the program.* Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) *Anticipated source of available funds.* The statutory authority for funding the program and the agency, sub-agency, or specific program unit that will issue the Federal awards (to the extent possible) and associated funding identifier (for example, Treasury Account Symbol(s));

(5) *General eligibility requirements.* The statutory, regulatory, or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (for example, type of recipient); and

(6) *Applicability of Single Audit Requirements.* Applicability of Single Audit Requirements as required by subpart F.

§ 200.204 Notices of funding opportunities.

The Federal agency must announce specific funding opportunities for Federal financial assistance that will be openly competed. The term openly competed means opportunities that are not directed to one or more specifically identified applicants. To the extent possible, the Federal agency should communicate opportunities to the public in plain language to ensure the announcement is accessible to diverse communities of eligible applicants, including underserved communities. The Federal agency should also make efforts to limit the length and complexity of the announcement and only include the information that is necessary for the effective communication of the program objectives. Federal agencies may offer pre-application technical assistance or provide clarifying information for funding opportunities. However, Federal agencies must ensure these resources are made accessible and widely available to all potential applicants; for example, by posting answers to questions and requests on *Grants.gov.* The Federal agency should make every effort to identify in the NOFO all eligible applicants (for example, different types of nonprofit organizations such as labor unions). The following information must be provided in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal agency must display the following information on *Grants.gov,* in a location preceding the full text of the announcement:

(1) Federal Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement);

(5) Assistance Listing Number(s);

(6) Funding Details. To the extent appropriate, the total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range or average;

(7) Key Dates. Key dates include due dates for submitting applications or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO states that applications will be evaluated on a ''rolling'' basis (that is, at different points during a specified period of time), the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision;

(8) Executive Summary. A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible applicants. The text of the executive summary should not exceed 500 words; and

(9) Agency contact information.

(b) *Availability period.* The Federal agency should make all funding opportunities available for application for at least 60 calendar days. However, the Federal agency may extend the availability period of an opportunity as needed. For example, extending the period may be necessary to provide technical assistance to an applicant pool that was not anticipated when the

announcement was made or has less experience with applying for Federal financial assistance. The Federal agency may also determine that an availability period of less than 60 days is sufficient for a particular funding opportunity. However, no funding opportunity should be available for less than 30 calendar days unless the Federal agency determines that exigent circumstances justify this.

(c) *Full text of funding opportunities.* (1) The Federal agency must include the information in Appendix I for every funding opportunity.

(2) Federal agencies should ensure that funding opportunities are written using plain language. To the extent possible Federal agencies must streamline opportunities to make them accessible, particularly for funding opportunities that are new, targeted to underserved communities, or intended to reach inexperienced applicants.

(3) To reduce application burden, Federal agencies should consider whether programmatic or administrative requirements specific to the agency, program, or funding opportunity must be met at the time of application or as a requirement of receiving a Federal award.

§ 200.205 Federal agency merit review of proposals.

Unless prohibited by Federal statute, the Federal agency must design and execute a merit review process of applications for discretionary Federal awards. The objective of a merit review process is to select recipients most likely to be successful in delivering results based on the program objectives as outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency. If utilizing external peer reviewers, these standards should identify the number of people the agency requires to participate in the merit review process and provide opportunities for a diverse group of participants, including those representing underserved communities. This process must be described or incorporated by reference in the applicable funding opportunity. See Appendix I to this part. See also § 200.204. The Federal agency must also periodically review its merit review process.

§ 200.206 Federal agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of government-wide data.* (1) Prior to making a Federal award, the Federal agency is required to review eligibility information for applicants and financial integrity information for applicants available in OMB-designated databases per the Payment Integrity Information Act of 2019 (Pub. L. 116–117), the ''Do Not Pay Initiative'' (31 U.S.C. 3354), and 41 U.S.C. 2313.

(2) The Federal agency is required to review the responsibility and qualification records available in the non-public segment of the System for Award Management (*SAM.gov*) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold. See 41 U.S.C. 2313. The Federal agency must consider all of the information available in *SAM.gov* with regard to the applicant and any immediate highest-level owner, predecessor (meaning, an organization that is replaced by a successor), or subsidiary, identified for that applicant in *SAM.gov.* See Public Law 112–239, National Defense Authorization Act for Fiscal Year 2013. The information in the system for a prior recipient of a Federal award must demonstrate a satisfactory record of administering programs or activities under Federal financial assistance or procurement awards, and integrity and business ethics. The Federal agency may make a Federal award to a recipient that does not fully meet these standards if it is determined that the information is not relevant to the Federal award under consideration or there are specific conditions that can appropriately mitigate the risk associated with the recipient in accordance with § 200.208.

(b) *Risk Assessment.* (1) The Federal agency must establish and maintain policies and procedures for conducting a risk assessment to evaluate the risks posed by applicants before issuing Federal awards. This assessment helps identify risks that may affect the advancement toward or the achievement of a project's goals and objectives. Risk assessments assist Federal managers in determining appropriate resources and time to devote to project oversight and monitor recipient progress. This assessment may incorporate elements such as the quality of the application, award amount, risk associated with the program, cybersecurity risks, and impacts on local jobs and the community. If the Federal agency determines that the Federal award will be made, specific conditions that address the assessed risk may be implemented in the Federal award. The risk criteria to be evaluated must be described in the announcement of the funding opportunity described in § 200.204.

(2) In evaluating risks posed by applicants, the Federal agency should consider the following items:

(i) *Financial stability.* The applicant's record of effectively managing financial risks, assets, and resources;

(ii) *Management systems and standards.* Quality of management systems and ability to meet the management standards prescribed in this part;

(iii) *History of performance.* The applicant's record of managing previous and current Federal awards, including compliance with reporting requirements and conformance to the terms and conditions of Federal awards, if applicable;

(iv) *Audit reports and findings.* Reports and findings from audits performed under subpart F or the reports and findings of any other available audits, if applicable; and

(v) *Ability to effectively implement requirements.* The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients of Federal awards.

(c) *Adjustments to the Risk Assessment.* The Federal agency may modify the risk assessment at any time during the period of performance, which may justify changes to the terms and conditions of the Federal award. See § 200.208.

(d) *Suspension and debarment compliance.* (1) The Federal agency must comply with the government-wide suspension and debarment guidance in 2 CFR part 180 and individual Federal agency suspension and debarment requirements in title 2 of the Code of Federal Regulations. Federal agencies must also require recipients to comply with these requirements. These requirements restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving Federal awards participating in Federal awards.

§ 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, government-wide data elements available from the OMB-designated standards lead. OMB will authorize additional information collections only on a limited basis and consistent with these requirements.

(b) *Information collection.* The Federal agency may inform applicants that they do not need to provide certain information already being collected through other means.

§ 200.208 Specific conditions.

(a) Federal agencies are responsible for ensuring that specific Federal award conditions and performance expectations are consistent with the program design (See § 200.202 and § 200.301)

(b) The Federal agency or pass-through entity may adjust specific conditions in the Federal award based on an analysis of the following factors:

(1) Review of OMB-designated repositories of government-wide data (for example, *SAM.gov*) or review of its risk assessment (See § 200.206);

(2) The recipient's or subrecipient's history of compliance with the terms and conditions of Federal awards;

(3) The recipient's or subrecipient's ability to meet expected performance goals as described in § 200.211; or

(4) A determination that a recipient or subrecipient has adequate financial resources to perform the Federal award.

(c) Specific conditions may include the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;

(3) Requiring additional or more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the recipient or subrecipient to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) Prior to imposing specific conditions, the Federal agency or pass-through entity must notify the recipient or subrecipient as to:

(1) The nature of the specific condition(s);

(2) The reason why the specific condition(s) is being imposed;

(3) The nature of the action needed to remove the specific condition(s);

(4) The time allowed for completing the actions; and

(5) The method for requesting the Federal agency or pass-through entity to reconsider imposing a specific condition.

(e) Any specific conditions must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes, or regulations, each Federal agency or pass-through entity is authorized to require a recipient or subrecipient to submit certifications and representations annually in *SAM.gov.* Submission may be required more frequently if a recipient or subrecipient fails to meet a requirement of a Federal award. When a recipient or subrecipient is provided an exception to the requirements of 2 CFR 25.110, the recipient or subrecipient must submit the appropriate assurance form (for example, SF–424B).

§ 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

§ 200.211 Information contained in a Federal award.

The Federal award must include the following information:

(a) *Federal award performance goals.* Where applicable, performance goals, indicators, targets, and baseline data must be included in the Federal award. The Federal agency must also specify in the terms and conditions of the Federal award how performance will be assessed, including the timing and scope of expected performance. See §§ 200.202 and 200.301 for more information on Federal award performance goals.

(b) *General Federal award information.* The Federal agency must include the following information in each Federal award:

(1) Recipient Name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.400);

(2) Recipient's Unique Entity Identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.1);

(5) Period of Performance Start and End Date;

(6) Budget Period Start and End Date;

(7) Amount of Federal Funds Obligated by this Action;

(8) Total Amount of Federal Funds Obligated;

(9) Total Approved Cost Sharing, where applicable;

(10) Total Amount of the Federal Award including, approved Cost Sharing;

(11) Budget Approved by the Federal Agency;

(12) Federal Award Description (to comply with statutory requirements (for example, FFATA));

(13) Name of the Federal agency (including contact information for the awarding official),

(14) Assistance Listings Number and Title;

(15) Identification of whether the Award is R&D; and

(15) Indirect Cost Rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(c) *General terms and conditions.* (1) Federal agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) *Administrative requirements.* Administrative requirements implemented by the Federal agency as specified in this part.

(ii) *National policy requirements.* These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(iii) *Recipient integrity and performance matters.* When the total Federal share of the Federal award may include more than $500,000 over the period of performance, the Federal agency must include the terms and conditions available in Appendix XII. See also § 200.113.

(iv) *Future budget periods.* When it is anticipated that the period of performance will include multiple budget periods, the Federal agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) *Termination provisions.* Federal agencies must inform recipients of the termination provisions in § 200.340, including the applicable termination provisions in the Federal agency's regulations or terms and conditions of the Federal award.

(2) The Federal award must incorporate, by reference, all general terms and conditions of the Federal award, which must be maintained on the Federal agency's website.

(3) The Federal agency must provide a copy of the full text of the general terms and conditions if a recipient requests it.

(4) The Federal agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by a recipient, auditors, or others. The archive should be located on the Federal agency's

website in the same place where current terms and conditions are available.

(d) *Federal award specific terms and conditions.* The Federal agency must include in each Federal award any specific terms and conditions that are in addition to the general terms and conditions. See also § 200.208. Whenever practicable, these specific terms and conditions should also be available on the Federal agency's website and in notices of funding opportunities (as outlined in § 200.204).

(e) *Federal agency requirements.* Any other information required by the Federal agency.

§ 200.212 Public access to Federal award information.

(a) Except as noted in paragraph (c) of this section, the Federal agency must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury's DATA Act Information Model Schema (DAIMS).

(b) All responsibility and qualification records posted in *SAM.gov* will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors (See Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15);

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar day waiting period by a Federal agency.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 200.213 Reporting a determination that an applicant is not qualified for a Federal award.

(a) The Federal agency must report in *SAM.gov* if it does not make a Federal award to an applicant because it determines that the applicant does not meet the minimum qualification standards as described in § 200.206(a)(2). The Federal agency must report that determination only if all of the following apply:

(1) The only basis for the determination is the applicant's prior record of performance on administering Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (meaning, the applicant was determined to be qualified based on all factors other than those two standards); and

(2) The total Federal share of the Federal award was expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal agency is not required to report a determination that an applicant is not qualified for a Federal award if they issue the Federal award in accordance with the requirements of § 200.208.

(c) If the Federal agency reports a determination that an applicant is not qualified for a Federal award, the Federal agency also must notify the applicant that:

(1) The determination was made and reported in *SAM.gov* and provides an explanation of the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination and then archived (See section 872 of Pub. L. 110–417, as amended, codified at 41 U.S.C. 2313);

(3) Each Federal agency that considers making a Federal award to the applicant during that five-year period will consider that information in determining the applicant's qualification to receive a Federal award when the total Federal share of a Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The applicant may review the responsibility/qualification records accessible in *SAM.gov* and comment on any information the system contains about the applicant; and

(5) Federal agencies must consider the applicant's comments in determining whether the applicant is qualified for a future Federal award.

(d) If the Federal agency enters information into *SAM.gov* about a determination that an applicant is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days; and

(2) Obtains an update to that information that could be helpful to other Federal agencies, the Federal agency should amend the information in the system within 30 days.

(e) Federal agencies must not post any information that will be made publicly available in the non-public segment of the responsibility/qualification records that is covered by a disclosure exemption under the Freedom of Information Act. If a recipient asserts within seven calendar days to a Federal agency that some or all of the publicly available information is covered by a disclosure exemption under the Freedom of Information Act, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Recipients and subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR part 180. The regulations in 2 CFR part 180 restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.

§ 200.215 Never contract with the enemy.

Federal agencies, recipients, and subrecipients are subject to the guidance implementing Never Contract with the Enemy in 2 CFR part 183. The guidance in 2 CFR part 183 affects covered contracts, grants, and cooperative agreements that are expected to exceed $50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending Federal funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in section 889 of Public Law 115–232, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua

Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under section 889 of Public Law 115–232, heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) A recipient or subrecipient may use covered telecommunications equipment or services for their own purposes (not program activities) provided they are not procured with Federal funds.

(d) The prohibition on covered telecommunications equipment or services applies to funds generated as program income, indirect cost recoveries, or to satisfy cost share requirements.

(e) The recipient or subrecipient is not required to certify that funds were not expended on covered telecommunications equipment or services beyond the certification provided upon signing the award.

(f) For additional information, see section 889 of Public Law 115–232 and § 200.471.

§ 200.217 Whistleblower protections.

An employee of a recipient or subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

Subpart D—Post Federal Award Requirements

§ 200.300 Statutory and national policy requirements.

(a) The Federal agency or pass-through entity must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, applicable Federal statutes (including statutes that prohibit discrimination) and regulations, and the requirements of this part. The Federal agency or pass-through entity must communicate to a recipient or subrecipient all relevant requirements, including those contained in general appropriations provisions, and incorporate them directly or by reference in the terms and conditions of the Federal award.

(b) In administering Federal awards that are subject to Federal statutes prohibiting discrimination based on sex, the Federal agency or pass-through entity must ensure that the award is administered in a way that does not unlawfully discriminate based on sexual orientation or gender identity, consistent with the Supreme Court's reasoning in *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020).

(c) In administering awards in accordance with the U.S. Constitution, the Federal agency must take account of the heightened constitutional scrutiny that may apply under the Constitution's Equal Protection clause for government action that provides differential treatment based on sexual orientation or gender identity.

§ 200.301 Performance measurement.

(a) The Federal agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster the adoption of promising practices. The Federal agency should establish program goals and objectives during program planning and design (see § 200.202). The Federal agency should clearly communicate the specific program goals and objectives in the Federal award, including how the Federal agency will measure the achievement of the goals and objectives, the expected timeline, and information on how the recipient must report the achievement of program goals and objectives. The Federal agency should also clearly communicate in the Federal award any expected outcomes, indicators, targets, baseline data, or data collections that the recipient is responsible for measuring and reporting. The Federal agency must ensure all requirements for measuring performance align with the Federal agency's strategic goals, strategic objectives, or performance goals relevant to a program (see OMB Circular A–11, Preparation, Submission, and Execution of the Budget Part 6).

(b) When establishing performance reporting frequency and content, the Federal agency should consider what information will be necessary to measure the recipient's progress, to identify promising practices of recipients, and build the evidence upon which the Federal agency makes program and performance decisions. The Federal agency should not require additional information that is not necessary for measuring program performance. See § 200.329 for more information on reporting program performance.

(c) The Federal agency should also specify in the Federal award any requirements of the recipients' participation in federally-funded evaluations.

§ 200.302 Financial management.

(a) Each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's funds. All recipient and subrecipient financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by the terms and conditions; and tracking expenditures to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. See § 200.450

(b) The recipient's or subrecipient's financial management system must provide for the following (see §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification of all Federal awards by the Assistance Listings title and number, Federal award identification number, Federal award year, and name of the Federal agency or pass-through entity.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting

requirements in §§ 200.328 and 200.329. When a Federal agency or pass-through entity requires reporting on an accrual basis from a recipient or subrecipient that maintains its records other than on an accrual basis, the recipient or subrecipient must not be required to establish an accrual accounting system. This recipient or subrecipient may develop accrual data for its reports based on an analysis of the documentation on hand.

(3) Maintaining records that sufficiently identify the source and expenditure of Federal funds for Federal awards. These records must contain information necessary to identify Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.

(4) Effective control over and accountability for all funds, property, and assets. The recipient or subrecipient must safeguard all assets and ensure they are used solely for authorized purposes. See § 200.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The recipient or subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should comply with the guidance in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States or the ''Internal Control-Integrated Framework'' issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) Evaluate and monitor the recipient's or subrecipient's compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified.

(e) Take cybersecurity and other measures as appropriate to safeguard information including protected personally identifiable information (PII). This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

§ 200.304 Bonds.

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal agency may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(b) The Federal agency may require adequate fidelity bond coverage where the recipient entity lacks coverage to protect the interest of the Federal Government.

(c) Where bonds, insurance, or both are required in the situations described above, the bonds and insurance must be obtained from companies holding certificates of authority issued by the U.S. Department of Treasury (see 31 CFR part 223).

§ 200.305 Federal payment.

(a) *Payments for States.* Payments for states are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A–2000, ''Overall Disbursing Rules for All Federal Agencies.''

(b) *Payments for recipients and subrecipients other than States.* The payment methods must minimize the time elapsing between the transfer and disbursement of funds regardless of whether the payment is made by electronic funds transfer or by other means. See § 200.302(b)(6). Except as noted in this part, the Federal agency must require recipients to use only OMB-approved, government-wide information collections to request payment.

(1) The recipient or subrecipient must be paid in advance, provided it maintains or demonstrates the willingness to maintain written procedures. Such procedures must minimize the time elapsing between the transfer and disbursement of funds. The procedures must also establish a financial management system that meets the standards for fund control and accountability as established in this part. Advance payments to a recipient or subrecipient must be limited to the minimum amounts needed and be timed with actual, immediate cash requirements in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements for direct program or project costs and the proportionate share of any allowable indirect costs. The recipient or subrecipient must make timely payments to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payment requests by the recipient or subrecipient must be consolidated to cover anticipated cash needs for all Federal awards received by the recipient from the Federal agency or pass-through entity.

(i) Advance payment mechanisms must comply with 31 CFR part 208 and include, but are not limited to, Treasury checks and electronic funds transfers.

(ii) Recipients and subrecipients must be authorized to submit payment requests as often as necessary when electronic fund transfers are used or at least monthly when electronic transfers are not used. See Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(3) Reimbursement is preferred when the requirements in paragraph (b) cannot be met, when the Federal agency or pass-through entity sets a specific condition per § 200.208, when requested by the recipient or subrecipient, when a Federal award is for construction, or when a significant portion of the construction project is accomplished through private market financing or Federal loans and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal agency or pass-through entity must make payment within 30 calendar days after receipt of the payment request unless the Federal agency or pass-through entity reasonably believes the request to be improper.

(4) If the recipient or subrecipient cannot meet the criteria for advance payments and the Federal agency or pass-through entity has determined that reimbursement is not feasible because the recipient or subrecipient lacks sufficient working capital, the Federal agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal agency or pass-through entity must advance cash payments to the recipient or subrecipient to cover its estimated disbursement needs for an initial period generally aligned to the recipient's or subrecipient's disbursing cycle. After that, the Federal agency or

pass-through entity must reimburse the recipient or subrecipient for its actual cash disbursements. Use of the working capital advance payment method requires that the pass-through entity provide timely advance payments to any subrecipients to meet the subrecipient's actual cash disbursements. The pass-through entity must not use the working capital advance method of payment if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) If available, the recipient or subrecipient must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on Federal funds before requesting additional cash payments.

(6) Payments for allowable costs must not be withheld at any time during the period of performance unless required by Federal statute, regulations, or in one of the following instances:

(i) The recipient or subrecipient has failed to comply with the terms and conditions of the Federal award; or

(ii) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables.'' Under such conditions, the Federal agency or pass-through entity may, upon reasonable notice, inform the recipient that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the debt is repaid to the Federal Government.

(7) A payment withheld for failure to comply with the terms and conditions of the Federal award must be released to the recipient or subrecipient upon subsequent compliance. When a Federal award is suspended, payment adjustments must be made in accordance with § 200.343.

(8) A payment must not be made to a recipient or subrecipient for amounts that the recipient or subrecipient withholds from contractors to assure satisfactory completion of work. Payment must be made when the recipient or subrecipient disburses the withheld funds to the contractors or to escrow accounts established to ensure satisfactory completion of work.

(9) The Federal agency or pass-through entity must not require separate depository accounts for funds provided to the recipient or subrecipient or establish any eligibility requirements for depositories. However, the recipient or subrecipient must be able to account for all Federal funds received, obligated, and expended.

(10) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(11) The recipient or subrecipient must maintain advance payments of Federal funds in interest-bearing accounts unless one of the following applies:

(i) The recipient or subrecipient receives less than $250,000 in Federal funding per year;

(ii) The best available interest-bearing account would not reasonably be expected to earn interest in excess of $500 per year on Federal cash balances;

(iii) The depository would require an average or minimum balance so high that it would not be feasible with the expected Federal and non-Federal cash resources;

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts; or

(v) An interest-bearing account is not readily accessible (for example, due to public or political unrest in a foreign country).

(12) The recipient or subrecipient may retain up to $500 per year of interest earned on Federal funds to use for administrative expenses of the recipient or subrecipient. Any additional interest earned on Federal funds must be returned annually to the Department of Health and Human Services Payment Management System (PMS) through either the Automated Clearing House (ACH) network or a Fedwire Funds Service payment. All interest in excess of $500 per year must be returned to PMS regardless of whether the recipient or subrecipient was paid through PMS. Instructions for returning interest can be found at *https://pms.psc.gov/grant-recipients/returning-funds-interest.html.*

(13) All other Federal funds must be returned to the payment system of the Federal agency. Returns should follow the instructions provided by the Federal agency. All returns to PMS should follow the instructions provided at *https://pms.psc.gov/grant-recipients/returning-funds-interest.html.*

§ 200.306 Cost sharing.

(a) Cost sharing may not be used as a factor during the merit review of applications or proposals unless allowed by the Federal agency's regulations, and the information is included in the notice of funding opportunity. Voluntarily committed cost sharing is not expected under Federal research grants. See §§ 200.414, 200.204, and Appendix I.

(b) The Federal agency or pass-through entity must accept any cost sharing or in-kind contributions as part of the recipient's or subrecipient's contributions to a program when they:

(1) Are verifiable in the recipient's or subrecipient's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for achieving the objectives of the Federal award;

(4) Are allowable under subpart E;

(5) Are not paid by the Federal Government under another Federal award, except where the program's Federal authorizing statute specifically provides that Federal funds made available for the program can be applied to cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other applicable provisions of this part.

(c) Unrecovered indirect costs, including indirect costs on cost sharing, may be included as part of cost sharing with the prior approval of the Federal agency or pass-through entity. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the recipient's or subrecipient's approved indirect cost rate.

(d) Values for recipient or subrecipient contributions of services and property must be established in accordance with the cost principles in subpart E. When a Federal agency or pass-through entity authorizes the recipient or subrecipient to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing must be the lesser of paragraph (d)(1) or (2) below.

(1) The value of the remaining life of the property recorded in the recipient's or subrecipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal agency or pass-through may approve using the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other labor may be counted as cost sharing if the service is necessary for the program. Rates for third-party volunteer services must be consistent with those paid for

similar work by the recipient or subrecipient. When the required skills are not found in the recipient's or subrecipient's workforce, rates must be consistent with those paid for similar work in the labor market where the recipient or subrecipient competes for the services involved. In either case, fringe benefits that are allowable, allocable, and reasonable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that are allowable, allocable, and reasonable. These services may also include indirect costs at either the third-party organization's federally-negotiated indirect cost rate or a rate in accordance with § 200.414(d). These services are allowable if they employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include items such as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. The assessed value of donated property included as cost sharing must not exceed the property's fair market value at the time of the donation.

(h) The method used for determining the value of donated equipment, buildings, and land for which title passes to the recipient or subrecipient may differ according to the following:

(1) If the purpose of the Federal award is to assist the recipient or subrecipient in acquiring equipment, buildings, or land, the aggregate value of the donated property may be claimed as cost sharing.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings, or land, only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed if provided in the terms and conditions of the Federal award. See § 200.420.

(i) The value of donated property must be determined in accordance with the accounting policies of the recipient or subrecipient with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient or subrecipient as established by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) except as provided in the implementing regulations at 49 CFR part 24, ''Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.''

(2) The value of donated equipment must not exceed the fair market value at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) The fair market value of third-party in-kind contributions must be documented and, to the extent feasible, supported by the same methods used internally by the recipient or subrecipient.

(k) For institutions of higher education (IHE), voluntary uncommitted cost sharing should be treated differently from mandatory or voluntary committed cost sharing and should not be included in the organized research base for computing the indirect cost rate or reflected in any allocation of indirect costs. Voluntary uncommitted cost sharing effort, is faculty-donated additional time above that agreed to as part of the award. See OMB memorandum M–01–06, dated January 5, 2001, Clarification of OMB A–21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 200.307 Program income.

(a) *General.* The recipient or subrecipient is encouraged to earn income to defray program costs when appropriate. Program income must be used for the original purpose of the Federal award. Program income earned during the period of performance may only be used for costs incurred during the period of performance or allowable closeout costs. Program income must be expended prior to requesting additional Federal funds. Program income exceeding amounts specified in the Federal award may be added to or deducted from the total allowable costs in accordance with the terms and conditions of the Federal award.

(b) *Use of program income.* There are three methods of applying program income: deduction; addition; and cost-sharing. The Federal agency should specify how program income will be used in the terms and conditions of the Federal award. The deduction method will be used if the Federal agency does not specify a method for applying program income. However, the addition method will be used when no method is specified for awards made to institutions of higher education (IHE) and nonprofit research institutions. In specifying alternatives to the deduction and addition methods, the Federal agency may distinguish between income earned by the recipient and income earned by subrecipients as well as between the sources, kinds, or amounts of income.

(1) *Deduction.* Program income is deducted from the total allowable costs, reducing the overall total amount of the Federal award.

(2) *Addition.* Program income is added to the total allowable costs, increasing the overall total amount of the Federal award. If no program income method is specified in the Federal award, prior approval is required to use the addition method.

(3) *Cost sharing.* Program income is used to meet the Federal award's cost sharing requirement. If no program income method is specified in the Federal award, prior approval is required to use the cost sharing method.

(c) *Income after the period of performance.* There are no requirements governing the disposition of program income earned after the end of the period of performance of the Federal award unless stipulated in the Federal agency regulations or the terms and conditions of the Federal award. The Federal agency may negotiate agreements with recipients regarding appropriate uses of income earned after the end of the period of performance as part of the closeout process. See § 200.344.

(d) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to generating program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(e) *Not considered program income.* The following are not considered program income unless specified in Federal statutes, regulations, or the terms and conditions of the Federal award:

(1) *Governmental revenues.* Taxes, special assessments, levies, fines, and similar revenues the recipient or subrecipient raised.

(2) *Property.* Proceeds from the sale of real property, equipment, or supplies. The proceeds must be handled in accordance with the requirements of the Property Standards of §§ 200.311, 200.313, 200.314, or as explicitly identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(3) *License fees and royalties.* License fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under the Federal award subject to 37 CFR part 401.

§ 200.308 Revision of budget and program plans.

(a) *Approved budget in general.* The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include the Federal share, non-Federal share, or both depending upon Federal agency requirements.

(b) *Deviations from approved budget.* The recipient or subrecipient must report deviations from the approved budget, project or program scope, or objective(s) in accordance with § 200.329. The recipient or subrecipient must request prior approvals from the Federal agency or pass-through entity for budget and program plan revisions in accordance with this section.

(c) *Requesting approval for budget revisions.* When requesting approval for budget revisions, the recipient or subrecipient must use the same format for budget information that was used in their application. However, the Federal agency or pass-through entity may inform the recipient or subrecipient that a letter of request is sufficient.

(d) *Federal agency or pass-through entity review.* The Federal agency or pass-through entity must review the request for budget or program plan revision and notify the recipient or subrecipient whether the revisions have been approved within 30 days of receipt of the request. The Federal agency or pass-through entity must inform the recipient or subrecipient in writing when a decision can be expected if more than 30 days is required for a review.

(e) *Limitation on other prior approval requirements.* Unless specified in this guidance, the Federal agency may not impose other prior approval requirements for specific items not approved by OMB. See also §§ 200.102 and 200.407.

(f) *Revisions Requiring Prior Approval.* A recipient or subrecipient must request prior written approval from the Federal agency or pass-through entity for the following reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in key personnel specified in the recipient's or subrecipient's application and included in the Federal award.

(3) The disengagement from a project for more than three months, or a 25 percent reduction in time and effort devoted to the Federal award over the course of the period of performance, by the approved project director or principal investigator.

(4) Incurring costs that require prior approval in accordance with subpart E. The Federal agency may waive prior approval of these costs when the costs requiring prior approval are included in the recipient's or subrecipient's application, and also included in the Federal award.

(5) The transfer of funds budgeted for participant support costs to other budget categories.

(6) Subaward activities not proposed in the application and approved in the Federal award. A change in subrecipient only requires prior approval if the Federal agency or pass-through entity includes the requirement in the terms and conditions of the Federal award. In general, a Federal agency or pass-through entity should not require prior approval of a change to the subrecipient unless the inclusion was a determining factor in the merit review or eligibility process. This requirement does not apply to acquiring equipment, supplies, or general support services.

(7) Changes in the total approved cost-sharing amount.

(8) Requesting additional Federal funds to complete the project. If approved, the Federal agency must ensure that adequate funds are available to avoid a violation of the Antideficiency Act.

(9) Transferring funds between the construction and nonconstruction work under a Federal award.

(10) A no-cost extension (meaning, an extension of time that requires no additional Federal funds) of the period of performance, other than any one-time extension authorized by the Federal agency in accordance with paragraph (g)(2). All requests for no-cost extensions should be submitted at least 10 calendar days before the conclusion of the period of performance. The Federal agency may approve multiple no-cost extensions under a Federal award if not prohibited by Federal statute or regulation.

(g) *Waiver of certain prior approvals.* Except for the requirements listed in paragraphs (f)(1) through (10), the Federal agency is authorized to waive other prior written approvals contained in subparts D and E. Such waivers may include authorizing recipients to do one or more of the following:

(1) *Pre-award costs.* Incur project costs 90 calendar days before the Federal award date. Expenses incurred more than 90 calendar days before the Federal award date requires prior approval of the Federal agency. All costs incurred before the Federal award date are at the recipient's own risk (for example, the Federal agency is not required to reimburse such costs if the recipient does not receive the Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). Pre-award costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency. See also § 200.458.

(2) *One-time extensions.* Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (g)(2)(i) through (iii) of this section apply. Prior approval is not required if a recipient is authorized in the terms and conditions of the Federal award to initiate a one-time extension. However, the recipient must notify the Federal agency in writing with the supporting justification and a revised period of performance at least 10 calendar days before the conclusion of the period of performance. A one-time extension may not be exercised for the sole purpose of using unobligated balances. This paragraph does not preclude the Federal agency from approving further no-cost extensions to the Federal award. One-time extensions require prior approval from the Federal agency when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved scope of the project.

(3) *Unobligated Balances.* Carry forward unobligated balances to subsequent budget periods.

(h) *Prior approvals for research awards.* The prior approval requirements described in paragraph (g) are automatically waived for Federal awards that support research unless stipulated in the Federal agency's regulations or terms and conditions of the Federal award. However, one-time extensions require the Federal agency's prior approval when one of the conditions in paragraph (g)(2) of this section applies.

(i) *Awards above the Simplified Acquisition Threshold.* The Federal agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation. The Federal agency may restrict the transfer of funds among direct cost categories (for example, personnel, travel, and supplies) or programs, functions, and activities when:

(1) The Federal share of the Federal award exceeds the simplified acquisition threshold; and

(2) The cumulative amount of a transfer exceeds 10 percent of the total budget, including cost share, as last approved by the Federal agency.

§ 200.309 Modifications to Period of Performance.

When the Federal agency or pass-through entity extends the Federal award, the period of performance will be amended to end at the completion of the extension. When the Federal agency decides not to continue a Federal award with multiple budget periods, the period of performance will be amended to end at the completion of the authorized budget period. If termination occurs, the period of performance will be amended to end upon the effective date of termination. A renewal award means an award made after the expiration of a Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. The start date of a renewal award begins a new and distinct period of performance.

Property Standards

§ 200.310 Insurance coverage.

The recipient or subrecipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property and equipment owned by the recipient or subrecipient. Insurance is not required for Federally-owned property unless required by the terms and conditions of the Federal award.

§ 200.311 Real property.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under the Federal award will vest upon acquisition in the recipient or subrecipient.

(b) *Use.* Except as otherwise provided by Federal statutes or the Federal agency, real property must be used for the originally-authorized purpose as long as it is needed for that purpose. While the property is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted.

(c) *Appraisals.* Appraisals of real property must be as conducted by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) except as provided in the implementing regulations at 49 CFR part 24, ''Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.''

(d) *Disposition.* When real property is no longer needed for the originally-authorized purpose, the recipient or subrecipient must obtain disposition instructions from the Federal agency or pass-through entity. The instructions must specify one of the following disposition methods:

(1) *Retain title after compensating the Federal agency.* When the recipient or subrecipient retains title to the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and costs of any improvements) by the current fair market value of the property. However, in situations where the recipient or subrecipient is disposing of real property acquired or improved with the Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sell the property and compensate the Federal agency.* When a recipient or subrecipient sells the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and cost of any improvements) by the proceeds of the sale after deducting any actual and reasonable expenses paid to sell or fix up the property for sale. When the Federal award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. When directed to sell the property, the recipient or subrecipient must sell the property utilizing procedures that provide for competition to the extent practicable and that results in the highest possible return.

(3) *Transfer title to the Federal agency or a third party designated/approved by the Federal agency.* When a recipient or subrecipient transfers title to the property to a Federal agency or third party designated or approved by the Federal agency, the recipient or subrecipient is entitled to be paid an amount calculated by multiplying the percentage of the recipient's or subrecipient's contribution towards the original purchase of the real property (and cost of any improvements) by the current fair market value of the property.

§ 200.312 Federally owned and exempt property.

(a) Title to Federally-owned property remains vested in the Federal Government. The recipient or subrecipient must submit an inventory listing of Federally owned property in its custody to the Federal agency or pass-through entity on an annual basis. The recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity upon completion of the Federal award or when the property is no longer needed.

(b) If the Federal agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority unless the Federal agency has statutory authority to dispose of the property by alternative methods (*for example,* the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(i)). The Federal agency or pass-through entity must issue appropriate instructions to the recipient or subrecipient.

(c) Exempt property means property acquired under the Federal award where the Federal agency has chosen to vest title to the property to the recipient or subrecipient without further responsibility to the Federal Government. The Federal agency may only exercise this option when permitted by Federal statute and set forth in the terms and conditions of the Federal award. Absent statutory authority and specific terms and conditions of the Federal award, the title to exempt property acquired under the Federal award remains with the Federal Government.

§ 200.313 Equipment.

See also § 200.439.

(a) *Title.* Title to equipment acquired under the Federal award will vest upon acquisition in the recipient or subrecipient subject to the conditions of this section. This title must be a conditional title unless a Federal statute specifically authorizes the Federal agency to vest title in the recipient or subrecipient without further responsibility to the Federal Government (and the Federal agency elects to do so). A conditional title means a clear title is withheld by the Federal agency until conditions and requirements specified in the terms and conditions of a Federal award have been fulfilled. Title for equipment vested in a recipient or subrecipient is subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance or until the property is no longer needed for the purposes of the project.

(2) While the equipment is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests without the approval of the Federal agency or pass-through entity. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

(b) *General.* A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) The recipient or subrecipient must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program continues to be supported by the Federal award. The recipient or subrecipient must not encumber the equipment without prior approval of the Federal agency or pass-through entity. The Federal agency may require the submission of the applicable common forms for reporting on equipment. When no longer needed for the original project or program, the equipment may be used in other activities in the following order of priority:

(i) Activities under other Federal awards from the Federal agency that funded the original project; then

(ii) Activities under Federal awards from other Federal agencies. These activities include consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the recipient or subrecipient must also make the equipment available for use on other programs or projects supported by the Federal Government, provided that such use will not interfere with the purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the Federal agency that financed the equipment. Second preference must be given to programs or projects under Federal awards from other Federal agencies. Use for non-federally-funded projects is also permissible, provided such use will not interfere with the purpose for which it was originally acquired. The recipient or subrecipient should consider charging user fees as appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the recipient or subrecipient must not use equipment acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services. This restriction is effective as long as the Federal Government retains an interest in the equipment or as authorized by Federal statute.

(4) When acquiring replacement equipment, the recipient or subrecipient may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacing equipment) utilizing procedures that meet the following requirements:

(1) Property records must include a description of the property, a serial number or another identification number, the source of funding for the property (including the FAIN), the title holder, the acquisition date, the cost of the property, the percentage of the Federal agency contribution towards the original purchase, the location, use and condition of the property, and any disposition data including the date of disposal and sale price of the property. The recipient is responsible for maintaining and updating property records when there is a change in the status of the property.

(2) A physical inventory of the property must be conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be in place to ensure safeguards for preventing property loss, damage, or theft. Any loss, damage, or theft of equipment must be investigated and reported to the Federal agency or pass-through entity.

(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

(5) If the recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be in place to ensure the highest possible return.

(e) *Disposition.* When equipment acquired under a Federal award is no longer needed for the original project, program, or for other activities currently or previously supported by a Federal agency, the recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal agency or pass-through entity disposition instructions:

(1) Equipment with a current fair market value of $10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.

(2) Except as provided in § 200.312(b), or if the Federal agency or pass-through entity fails to provide requested disposition instructions within 120 days, items of equipment with a current fair market value in excess of $10,000 (per-unit) may be retained or sold by the recipient or subrecipient. However, the Federal agency is entitled to an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase by the current market value or proceeds from the sale. If the equipment is sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain $1,000 or 10 percent (whichever is less) from the Federal share of the proceeds to cover expenses associated with the selling and handling of the equipment.

(3) The recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that the recipient or subrecipient must be entitled to

compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a recipient or subrecipient fails to take appropriate disposition actions, the Federal agency or pass-through entity may direct the recipient or subrecipient to take disposition actions.

(f) *Equipment retention.* When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

§ 200.314 Supplies.

See also § 200.453.

(a) Title to supplies acquired under the Federal award will vest upon acquisition in the recipient or subrecipient. When there is a residual inventory of unused supplies exceeding $10,000 in aggregate value at the end of the period of performance, and the supplies are not needed for any other Federal award, the recipient or subrecipient may retain or sell the unused supplies. Unused supplies means supplies that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. The Federal agency or pass-through entity is entitled to compensation in an amount calculated by multiplying the percentage of the Federal agency's or pass-through-through entity's contribution towards the cost of the original purchase(s) by the current market value or proceeds from the sale. If the supplies are sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain $500 or 10 percent (whichever is less) from the Federal share of the proceeds to cover expenses associated with the selling and handling of the supplies.

(b) Unless expressly authorized by Federal statute, the recipient or subrecipient must not use supplies acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services. This restriction is effective as long as the Federal Government retains an interest in the supplies or as authorized by Federal statute.

§ 200.315 Intangible property.

(a) Title to intangible property acquired under a Federal award vest upon acquisition in the recipient or subrecipient. The recipient or subrecipient must use that intangible property for the originally-authorized purpose and must not encumber the property without the approval of the Federal agency or pass-through entity. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted. When no longer needed for the originally-authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).

(b) To the extent permitted by law, the recipient or subrecipient is not prohibited from asserting any copyright it may own in any work resulting from or acquired under the Federal award. To the extent permitted by law, the Federal agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so. This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories.

(c) The recipient or subrecipient is subject to applicable regulations governing patents and inventions, including government-wide regulations in 37 CFR 401.

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.

(e)(1) The recipient or subrecipient must provide research data relating to published research findings produced under the Federal award and that were used by the Federal Government in developing an agency action that has the force and effect of law if requested by the Federal agency in response to a Freedom of Information Act (FOIA) request. When the Federal agency obtains the research data solely in response to a FOIA request, the Federal agency may charge the requester a fee for the cost of obtaining the research data. This fee should reflect the costs incurred by the Federal agency and the recipient or subrecipient. This fee is in addition to any fees the Federal agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings mean:

(i) Research findings published in a peer-reviewed scientific or technical journal; or

(ii) Research findings publicly cited by a Federal agency in developing an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings. Research data does not include any of the following:

(i) Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (for example, laboratory samples).

(ii) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(iii) Personnel, medical, and other personally identifiable information that, if disclosed, would constitute an invasion of personal privacy. Information that could identify a particular person in a research study is not considered research data.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property acquired or improved with the Federal award must be held in trust by the recipient or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal agency or pass-through entity may require the recipient or subrecipient to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

Procurement Standards

§ 200.317 Procurements by States and Indian Tribes.

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327. All other recipients and subrecipients, including subrecipients of a State, must follow the procurement

standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

(a) *Documented procurement procedures.* The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327.

(b) *Oversight of contractors.* Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) *Conflicts of interest.* (1) The recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, or agent, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, and agent of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

(2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) *Avoidance of unnecessary or duplicative items.* The recipient's or subrecipient's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.

(e) *Procurement arrangements using strategic sourcing.* When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

(f) *Use of excess and surplus Federal property.* The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

(g) *Use of value engineering clauses.* When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

(h) *Responsible contractors.* The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

(i) *Procurement records.* The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

(j) *Time-and-materials type contracts.* (1) The recipient or subrecipient may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient or subrecipient awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) *Settlement of contractual and administrative issues.* The recipient or subrecipient is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include but are not limited to, source evaluation, protests, disputes, and claims. In resolving these issues, the Federal agency may not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Proper oversight does not relieve the recipient or subrecipient of any of its contractual responsibilities. Violations of law must be referred to the Federal, State, or local authority with proper jurisdiction.

(l) *Examples of labor and employment practices.* The procurement standards in this subpart do not prohibit recipients or subrecipients from using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements; requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative OMB Memorandum M–21–28, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located, consistent with the policies and procedures of the recipient or subrecipient, provided that a recipient or subrecipient may not prohibit interstate hiring; requiring a contractor to use hiring preferences or goals for individuals with barriers to employment

(as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 13985; using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or offering employees of a predecessor contractor rights of first refusal under a new contract. Federal agencies may allow recipients and subrecipients to use such practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

§ 200.319 Competition.

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of this section and § 200.320.

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that assist recipients and subrecipients with developing or drafting specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

(c) Examples of requirements that may restrict competition include, but are not limited to:

(1) Placing unreasonable requirements on firms for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(d) The recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Are made in accordance with § 200.319(b);

(2) Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a ''brand name or equivalent'' description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and

(3) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(e) The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

(f) To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work or products providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Procurement Methods.

There are three types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or proposals); and noncompetitive procurement methods. For any of these methods, the recipient or subrecipient must maintain and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319.

(a) *Informal procurement methods for small purchases.* These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in § 200.1. Recipients and subrecipients may also establish a lower threshold. Informal procurement methods include:

(1) *Micro-purchases*—(i) *Distribution.* The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold defined in § 200.1. To the extent practicable, the recipient or subrecipient should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information. Purchase cards may be used as a method of payment for micro-purchases.

(iii) *Micro-purchase thresholds.* The recipient or subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. The recipient or subrecipient may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) *Recipient or subrecipient increase to the micro-purchase threshold up to $50,000.* The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with § 200.334. The self-certification must include a justification, clear

identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold is consistent with State law.

(v) *Recipient or subrecipient increase to the micro-purchase threshold over $50,000.* Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The recipient or subrecipient must submit a request that includes the requirements in paragraph (a)(1)(iv) of this section. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

(2) *Simplified acquisitions*—(i) *Simplified acquisition procedures.* The aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the recipient or subrecipient.

(ii) *Simplified acquisition thresholds.* The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which may be lower than, but not exceed, the threshold established in the FAR.

(b) *Formal procurement methods.* Formal procurement methods are required when the value of the procurement transaction under a Federal award exceeds the simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with paragraph (a)(2)(ii) of this section:

(1) *Sealed bids.* This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services.

(i) For sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders have been identified as willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. For local governments, the invitation for bids must be publicly advertised.

(B) The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids. For local governments, the bids must be opened publicly.

(D) A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

(E) The recipient or subrecipient must document and provide a justification for all bids it rejects.

(2) *Proposals.* This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. They are awarded in accordance with the following requirements:

(i) Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.

(ii) The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections.

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

(iv) The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances apply:

(1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The procurement transaction can only be fulfilled by a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

(4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or

(5) After soliciting several sources, competition is determined inadequate.

§ 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.

(a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(b) Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

(3) Dividing procurement transactions into separate procurements to permit

maximum participation by these business types;

(4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

§ 200.322 Domestic preferences for procurements.

(a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) ''Produced in the United States'' means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) ''Manufactured products'' means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

§ 200.323 Procurement of recovered materials.

(a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

§ 200.324 Contract cost and price.

(a) The recipient or subrecipient must perform a cost-benefit or price analysis for every procurement transaction, including contract modifications, in excess of the Simplified Acquisition Threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must develop their own estimates before receiving bids or proposals.

(b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the recipient or subrecipient under subpart E of this part. The recipient or subrecipient may reference its own cost principles as long as they comply with subpart E of this part.

(c) The recipient or subrecipient may not use the ''cost plus a percentage of cost'' and ''percentage of construction costs'' methods of contracting.

§ 200.325 Federal agency or pass-through entity review.

(a) The Federal agency or pass-through entity may review the technical specifications of proposed procurements under the Federal award if the Federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition. The recipient or subrecipient must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity. This review should take place prior to the time the specifications are incorporated into a solicitation document. When the recipient or subrecipient desires to accomplish the review after a solicitation has been developed, the Federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.

(b) When requested, the recipient or subrecipient must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:

(1) The recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;

(3) The procurement is expected to exceed the Simplified Acquisition Threshold and specifies a ''brand name'' product;

(4) The procurement is expected to exceed the Simplified Acquisition Threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The recipient or subrecipient is exempt from the pre-procurement review in paragraph (b) of this section if the Federal agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The recipient or subrecipient may request that the Federal agency or pass-through entity review its procurement system to determine whether it meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded regularly.

(2) The recipient or subrecipient may self-certify its procurement system. However, self-certification does not limit the Federal agency's or pass-

through-through entity's right to review the system. Under a self-certification procedure, the Federal agency or pass-through entity may rely on written assurances from the recipient or subrecipient that it is complying with the standards of this part. The recipient or subrecipient must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold. Before doing so, the Federal agency or pass-through entity must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual obligations within the specified timeframe.

(b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.

(c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

§ 200.327 Contract provisions.

The recipient's or subrecipient's contracts must contain the applicable provisions described in Appendix II of this part.

Performance and Financial Monitoring and Reporting

§ 200.328 Financial reporting.

(a) The Federal agency must only require OMB-approved government-wide data elements on recipient financial reports. At the time of publication, this consists of the Federal Financial Report (SF–425); however, this also applies to any future OMB-approved government-wide data elements available from the OMB-designated standards lead.

(b) The Federal agency or pass-through entity must collect financial reports no less than annually. The Federal agency or pass-through entity may not collect financial reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect financial reports in coordination with performance reports.

(c) The recipient or subrecipient must submit financial reports as required by the Federal award. Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period.

(d) The final financial report submitted by the recipient must be due no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit a final financial report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any financial report with justification from the recipient or subrecipient.

§ 200.329 Monitoring and reporting program performance.

(a) *Monitoring by the recipient.* The recipient or subrecipient is responsible for the oversight of the Federal award. The recipient or subrecipient must monitor its activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Monitoring by the recipient or subrecipient must cover each program, function, or activity. See also § 200.332.

(b) *Reporting program performance.* The Federal agency must use OMB-approved common information collections, as applicable, when requesting performance reporting information. The Federal agency must only require OMB-approved government-wide data elements in collection of performance information including Research Performance Progress Reports if applicable. The Federal agency or pass-through entity may not collect performance reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect performance reports in coordination with financial reports. When reporting program performance, the recipient or subrecipient must relate financial data and project or program accomplishments to the performance goals and objectives of the Federal award. Also, the recipient or subrecipient must provide cost information to demonstrate cost-effective practices (for example, through unit cost data) when required by the terms and conditions of the Federal award. In some instances (for example, discretionary research awards), this may be limited to the requirement to submit technical performance reports. Reporting requirements must clearly indicate a standard against which the recipient's or subrecipient's performance can be measured. As noted in OMB Circular A–11, Part 6, Section 280, measures of customer experience are of co-equal importance as traditional measures of financial and operational performance. Reporting requirements should not solicit information from the recipient or subrecipient that is not necessary for the effective monitoring of the Federal award. Federal agencies should consult monitoring framework documents such as the agency's Evaluation Plan to make that determination.

(c) *Submitting performance reports.* (1) The recipient or subrecipient must submit performance reports as required by the Federal award. Intervals must be no less frequent than annually nor more frequent than quarterly except if specific conditions are applied (See § 200.208). Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal agency or pass-through entity may require annual reports before the anniversary dates of multiple-year Federal awards. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any performance report with justification from the recipient or subrecipient.

(2) As applicable, performance reports should contain information on the following:

(i) A comparison of accomplishments to the objectives of the Federal award established for the reporting period (for example, comparing costs to units of accomplishment). Where performance trend data and analysis would be informative to the Federal agency program, the Federal agency should include this as a performance reporting requirement.

(ii) Explanations on why established goals or objectives were not met; and

(iii) Additional information, analysis, and explanation of cost overruns or higher-than-expected unit costs.

(d) *Construction performance reports.* Federal agencies or pass-through-through entities rely on on-site technical inspections and certified percentage of completion data to monitor progress under Federal awards for construction. Therefore, the Federal agency or pass-through entity may require additional performance reports when necessary to ensure the goals and objectives of Federal awards are met.

(e) *Significant developments.* The recipient or subrecipient must inform the Federal agency or pass-through entity of any significant developments between performance reporting due dates that could impact the Federal award. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays, or adverse conditions which will impact the recipient's or subrecipient's ability to meet milestones or the objectives of the Federal award. When significant developments occur that negatively impact the Federal Award, the recipient or subrecipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

(f) *Site visits.* The Federal agency or pass-through entity may conduct in-person or virtual site visits as warranted.

(g) *Performance report requirement waiver.* The Federal agency may waive any performance report that is not necessary to ensure the goals and objectives of the Federal award are being achieved.

§ 200.330 Reporting on real property.

The Federal agency or pass-through entity must require the recipient or subrecipient to submit at least annual reports on the status of real property in which the Federal Government retains an interest. In instances where the Federal Government's interest in the real property extends for 15 years or more, the Federal agency or pass-through entity may require the recipient or subrecipient to report at various multi-year frequencies. Reports submitted at multi-year frequencies may not exceed a five-year reporting period. The Federal agency must only require OMB-approved government-wide data elements on recipient real property reports.

Subrecipient Monitoring and Management

§ 200.331 Subrecipient and contractor determinations.

An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor. The recipient or subrecipient is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor. The Federal agency may require the recipient or subrecipient to comply with additional guidance to inform these determinations. The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier. All of the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. Therefore, the recipient or subrecipient is responsible for determining the nature of an agreement. The substance of the relationship is more important than the form of the agreement.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of the Federal award and creates a Federal financial assistance relationship with a subrecipient. See the definition of *Subaward* in § 200.1. Characteristics that support the classification of the entity as a subrecipient include, but are not limited to, when the entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether the objectives of a Federal program were met;

(3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the recipient's or subrecipient's use and creates a procurement relationship with a contractor. See the definition of *contract* in § 200.1. Characteristics that support a procurement relationship between the recipient or subrecipient and a contractor include, but are not limited to, when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the implementation of a Federal program; and

(5) Is not subject to compliance requirements of a Federal program as a result of the agreement. However, similar requirements may apply for other reasons.

§ 200.332 Requirements for pass-through entities.

A pass-through entity must:

(a) Confirm in *SAM.gov* that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.

(b) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information provided below. A pass-through entity must provide the best available information when some of the information below is unavailable. A pass-through entity must amend a subaward if additional information becomes available or data elements change. Required information includes:

(1) Federal award identification.

(i) Subrecipient's name (must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated in the subaward;

(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity, including the current financial obligation;

(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(x) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of the Federal agency, pass-through entity, and contact information for awarding official of the pass-through entity;

(xii) Assistance Listings title and number; the pass-through entity must

identify the dollar amount made available under each Federal award and the Assistance Listings Number at the time of disbursement;

(xiii) Identification of whether the Federal award is for research and development; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is used in accordance with § 200.414).

(2) All requirements of the subaward, including requirements imposed by Federal statutes, regulations, and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see § 200.415) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency;

(4) Indirect Cost Rate;

(i) An approved indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, a pass-through entity must determine the appropriate rate in collaboration with the subrecipient. The indirect cost rate may be either:

(A) An indirect cost rate negotiated between the pass-through entity and the subrecipient. These rates may be based on a prior negotiated rate between a different pass-through entity and the subrecipient. In these instances, the pass-through entity is not required to collect information justifying the rate but may elect to do so; or

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require the use of the de minimis indirect cost rate if the subrecipient has an approved indirect cost rate negotiated with the Federal Government. Subrecipients may elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to access the subrecipient's records and financial statements for the pass-through entity to fulfill its monitoring requirements; and

(6) Appropriate terms and conditions concerning the closeout of the subaward.

(c) Prior to issuing a subaward, evaluate each subrecipient's risk of noncompliance with a subaward to determine the appropriate subrecipient monitoring described in paragraph (e) of this section. When evaluating a subrecipient's risk, a pass-through entity should consider the following:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits. This includes considering whether or not the subrecipient receives a Single Audit in accordance with subpart F and the extent to which the same or similar subawards have been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems, policies, or procedures; and

(4) Any Federal agency monitoring results (for example, if the subrecipient also receives Federal awards directly from the Federal agency).

(d) If appropriate, consider implementing specific conditions in a subaward described in § 200.208 and notify the Federal agency of the specific conditions.

(e) Monitor the activities of a subrecipient to ensure that a subaward complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(g) Verify that a subrecipient is audited as required by subpart F of this part.

(h) Consider whether the results of a subrecipient's audit, on-site reviews, or other monitoring necessitate adjustments to the pass-through entity's records.

(i) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 and in program regulations.

§ 200.333 Fixed amount subawards.

With prior written approval from the Federal agency, the recipient may provide subawards based on fixed amounts. Fixed amount subawards must meet the requirements of § 200.201.

Record Retention and Access

§ 200.334 Record retention requirements.

The recipient or subrecipient must retain all Federal award records for three years from the date of submission of the final financial report. For awards that are renewed quarterly or annually, the recipient or subrecipient must retain records for three years from the date of submission of the quarterly or annual financial report, respectively. Records to be retained include but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through-through entities may not impose any other record retention requirements except for the following:

(a) The records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken if any litigation, claim, or audit is started before the expiration of the three-year period.

(b) When the recipient or subrecipient is notified in writing by the Federal agency or pass-through entity, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.

(c) The records for property and equipment acquired with the support of Federal funds must be retained for three years after final disposition.

(d) The three-year retention requirement does not apply to the recipient or subrecipient when records are transferred to or maintained by the Federal agency.

(e) The records for program income earned after the period of performance must be retained for three years from the end of the recipient's or subrecipient's fiscal year in which the program income is earned. This only applies if the Federal agency or pass-through entity requires the recipient or subrecipient to report on program income earned after the period of performance in the terms and conditions of the Federal award.

(f) The records for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates) must be retained according to the applicable option below:

(1) *If submitted for negotiation.* When a proposal, plan, or other computation must be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the date of submission.

(2) *If not submitted for negotiation.* When a proposal, plan, or other computation is not required to be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the end of the fiscal year (or another accounting period) covered by the proposal, plan, or other computation.

§ 200.335 Requests for transfer of records.

The Federal agency must request the transfer of records to its custody from the recipient or subrecipient when it determines that the records possess long-term retention value. However, the Federal agency may arrange for the recipient or subrecipient to retain the records that have long-term retention value so long as they are continuously available to the Federal Government.

§ 200.336 Methods for collection, transmission, and storage of information.

When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award information in an open file, non-licensed, and machine-readable formats. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a computer system. Upon request, the Federal agency or pass-through entity must always provide or accept paper versions of Federal award information to and from the recipient or subrecipient. The Federal agency or pass-through entity must not require additional copies of Federal award information submitted in paper versions. The recipient or subrecipient does not need to create and retain paper copies when original records are electronic and cannot be altered. In addition, the recipient or subrecipient may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to periodic quality control reviews. Quality control reviews must ensure that electronic conversion procedures provide safeguards against the alteration of records and assurance that records remain in a format that is readable by a computer system.

§ 200.337 Access to records.

(a) *Records of recipients and subrecipients.* The Federal agency or pass-through entity, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives must have the right of access to any records of the recipient or subrecipient pertinent to the Federal award to perform audits, execute site visits, or for any other official use. This right also includes timely and reasonable access to the recipient's or subrecipient's personnel for the purpose of interview and discussion related to such documents or the Federal award in general.

(b) *Extraordinary and rare circumstances.* The recipient or subrecipient and Federal agency or pass-through entity must take measures to protect the name of victims of a crime when access to the victim's name is necessary. Only under extraordinary and rare circumstances would such access include a review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head or delegate of the Federal agency.

(c) *Expiration of right of access.* The Federal agency's or pass-through-through entity's rights of access are not limited to the required retention period of this part but last as long as the records are retained. Federal agencies or pass-through-through entities must not impose any other access requirements upon recipients and subrecipients.

§ 200.338 Restrictions on public access to records.

Federal agencies or pass-through-through entities may not place restrictions on the recipient or subrecipient that limit public access to the records of the recipient or subrecipient pertinent to a Federal award, except for protected personally identifiable information (PII) or other sensitive information when the Federal agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to records that remain under the recipient's or subrecipient's control except as required by § 200.315. Unless required by Federal, State, local, and tribal law, recipients and subrecipients are not required to permit public access to their records. The recipient's or subrecipient's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

The Federal agency or pass-through entity may implement specific conditions if the recipient or subrecipient fails to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award. See § 200.208 for additional information on specific conditions. When the Federal agency or pass-through entity determines that noncompliance cannot be remedied by imposing specific conditions, the Federal agency or pass-through entity

may take one or more of the following actions:

(a) Temporarily withhold payments until the recipient or subrecipient takes corrective action.

(b) Disallow costs for all or part of the activity associated with the noncompliance of the recipient or subrecipient.

(c) Suspend or terminate the Federal award in part or in its entirety.

(d) Initiate suspension or debarment proceedings as authorized in 2 CFR part 180 and the Federal agency's regulations. Pass-through entities must recommend suspension or debarment proceedings for a subrecipient or subcontractor be initiated by the Federal agency.

(e) Withhold further Federal funds (new awards or continuation funding) for the project or program.

(f) Pursue other legally available remedies.

§ 200.340 Termination.

(a) The Federal award may be terminated in part or its entirety as follows:

(1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award;

(2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;

(3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or

(4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award.

(b) The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award.

(c) When the Federal agency terminates the Federal award prior to the end of the period of performance due to the recipient's material failure to comply with the terms and conditions of the Federal award, the Federal agency must report the termination in *SAM.gov*. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter information in *SAM.gov*.

(1) The information required under paragraph (c) of this section is not to be reported in *SAM.gov* until the recipient has either:

(i) Exhausted its opportunities to object or challenge the decision (see § 200.342); or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal agency that it intends to appeal the decision to terminate.

(2) If a Federal agency, after entering information about a termination in *SAM.gov*, subsequently:

(i) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal agencies. The Federal agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) The Federal agency must not post any information that will be made publicly available in the non-public segment of *SAM.gov* that is covered by a disclosure exemption under the Freedom of Information Act (FOIA). When the recipient asserts within seven calendar days to the Federal agency which posted the information that a disclosure exemption under FOIA covers some of the information made publicly available, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Before reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's FOIA procedures.

(d) When the Federal award is terminated in part or its entirety, the Federal agency or pass-through entity and recipient or subrecipient remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

(e) A Federal agency determination to not award continuation funding does not constitute a termination. For example, if an award no longer effectuates the program goals or agency priorities or continued Federal funding is not available.

§ 200.341 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide written notice of termination to the recipient or subrecipient. The written notice of termination should include the reasons for termination, the effective date, and the portion of the Federal award to be terminated, if applicable.

(b) If the Federal award is terminated for the recipient's material failure to comply with a Federal award, the notification must state the following:

(1) The termination decision will be reported in *SAM.gov*;

(2) The information will be available in *SAM.gov* for five years (and then archived) from the date of the termination;

(3) A Federal agency that considers making a Federal award to the recipient during that five-year period that is expected to exceed the simplified acquisition threshold over the period of performance must consider the information regarding the recipient's material failure to comply in judging whether the entity is qualified to receive the Federal award.

(4) The recipient may comment on any information in *SAM.gov* about the recipient for future consideration by Federal agencies. The recipient may submit comments in *SAM.gov.*

(5) Federal agencies should consider the recipient's comments when determining whether the recipient is qualified for a Federal award.

(c) Upon termination of the Federal award, the Federal agency must provide the information to *USAspending.gov* as required by the Federal Funding Accountability and Transparency Act (FFATA). In addition, the Federal agency must update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 2313 and 31 U.S.C. 3321.

§ 200.342 Opportunities to object, hearings, and appeals.

The Federal agency or pass-through entity must maintain written procedures for processing objections, hearings, and appeals. Upon initiating a remedy for noncompliance (for example, disallowed costs, a corrective action plan, or termination), the Federal agency or pass-through entity must provide the recipient or subrecipient with an opportunity to object and provide information challenging the action. The Federal agency or pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action involved.

§ 200.343 Effects of suspension and termination.

Costs to the recipient or subrecipient resulting from financial obligations incurred by the recipient or subrecipient during a suspension or after the termination of a Federal award are not allowable unless the Federal agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from financial obligations which were properly incurred by the recipient or subrecipient before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

Closeout

§ 200.344 Closeout.

(a) The Federal agency or pass-through entity must close out the Federal award when it determines that all administrative actions and required work of the Federal award have been completed. When the recipient or subrecipient fails to complete the necessary administrative actions or the required work for an award, the Federal agency or pass-through entity must proceed with closeout based on the information available. This section specifies the administrative actions required at the end of the period of performance.

(b) A recipient must submit all reports (financial, performance, and other reports required by the Federal award) no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit all reports (financial, performance, and other reports required by a subaward) to the pass-through entity no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient. When the recipient does not have a final indirect cost rate covering the period of performance, a final financial report must still be submitted to fulfill the requirements of this section. The recipient must submit a revised final financial report when all applicable indirect cost rates have been finalized.

(c) The recipient must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must liquidate all financial obligations incurred under a subaward no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient.

(d) The Federal agency or pass-through entity must not delay payments to the recipient or subrecipient for costs meeting the requirements of subpart E of this part.

(e) The recipient or subrecipient must immediately refund any unobligated funds that the Federal agency or pass-through entity paid and that are not authorized to be retained. See OMB Circular A–129 and § 200.346.

(f) The Federal agency or pass-through entity must make all necessary adjustments to the Federal share of costs after closeout reports are received. For example, the disallowance of any costs or the deobligation of an unliquidated balance.

(g) The recipient or subrecipient must account for any property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(h) The Federal agency must make every effort to complete all closeout actions no later than one year after the end of the period of performance. If the indirect cost rate has not been finalized and would delay closeout, the Federal agency is authorized to mutually agree with the recipient to close an award using the current or most recently negotiated rate. However, the recipient is not required to agree to a final rate for a Federal award for the purpose of prompt closeout.

(i) If the recipient does not comply with the requirements of this section, including submitting all final reports, the Federal agency must report the recipient's material failure to comply with the terms and conditions of the Federal award in *SAM.gov*. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov*. Federal agencies may also pursue other enforcement actions as appropriate. See § 200.339.

Post-Closeout Adjustments and Continuing Responsibilities

§ 200.345 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of the Federal award does not affect any of the following:

(1) The right of the Federal agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or review. However, the Federal agency or pass-through entity must make determinations to disallow costs and notify the recipient or subrecipient within the record retention period.

(2) The recipient's or subrecipient's requirement to return funds or right to receive any remaining and available funds as a result of refunds, corrections, final indirect cost rate adjustments (unless the Federal award in closed in accordance with § 200.344(h)), or other transactions.

(3) The ability of the Federal agency or pass-through entity to make financial adjustments to a previously closed Federal award, such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F of this part.

(5) Property management and disposition requirements in §§ 200.310 through 200.316.

(6) Records retention as required in §§ 200.334 through 200.337.

(b) After the closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part. This may only be done with the consent of the awarding Federal agency or pass-through entity and the recipient or subrecipient, provided the responsibilities of the recipient or subrecipient referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient or subrecipient, as appropriate.

Collection of Amounts Due

§ 200.346 Collection of amounts due.

Any Federal funds paid to the recipient or subrecipient in excess of the amount that the recipient or subrecipient is determined to be entitled to under the Federal award constitutes a debt to the Federal Government. The Federal agency must collect all debts arising out of its Federal awards in accordance with the Standards for the Administrative Collection of Claims (31 CFR 901).

Subpart E—Cost Principles

General Provisions

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The recipient or subrecipient is responsible for the efficient and effective administration of the Federal award through sound management practices.

(b) The recipient or subrecipient is responsible for administering Federal funds in a manner consistent with Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) The recipient or subrecipient, in recognition of its unique combination of staff, facilities, and experience, is responsible for employing organization and management techniques necessary to ensure the proper and efficient administration of the Federal award.

(d) The accounting practices of the recipient or subrecipient must be consistent with these cost principles and support the accumulation of costs as required by these cost principles, including maintaining adequate documentation to support costs charged to the Federal award.

(e) The cognizant agency for indirect costs should ensure that the recipient or subrecipient consistently applies these cost principles when reviewing, negotiating, and approving cost allocation plans or indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the recipient or subrecipient, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect costs* in § 200.1.

(f) For recipients and subrecipients that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The recipient or subrecipient may not earn or keep any profit resulting from Federal financial assistance unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307.

§ 200.401 Application.

(a) *General.* The recipient or subrecipient must apply these principles in determining allowable costs under Federal awards. The recipient or subrecipient must also use these principles as a guide in pricing fixed-price contracts and subcontracts when costs are used in determining the appropriate price. These cost principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on items such as education allowance or published tuition rates and fees.

(2) Capitation awards to Institutions of Higher Education (IHEs) based on case counts or the number of beneficiaries.

(3) Fixed amount awards. See 200.201.

(4) Federal awards to hospitals (see Appendix IX of this part).

(5) Grants and cooperative agreements for food commodities.

(6) Other awards under which the recipient or subrecipient is not required to account for actual costs incurred.

(b) *Federal contract.* A Federal contract awarded to a recipient is subject to the Cost Accounting Standards (CAS). It must incorporate the applicable CAS requirements per 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). With respect to the allocation of costs, the Cost Accounting Standards at 48 CFR parts 9904 or 9905 take precedence over the cost principles in subpart E. When a contract with a recipient is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (for example, CAS 414—48 CFR 9904.414—Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417—Cost of Money as an Element of the Cost of Capital Assets Under Construction, apply instead of the allowability provisions of § 200.449). For example, the allowability of costs in CAS-covered costs is determined first by the allocation provisions of the Cost Accounting Standards rather than the allowability provisions in § 200.449 (unless the CAS does not address the specific costs). In complying with those requirements, the recipient's application of cost accounting practices for estimating, accumulating, and reporting costs for Federal awards and CAS-covered contracts must be consistent with the cost accounting practices for the CAS-covered contracts. The recipient must maintain only one set of accounting records supporting the allocation of costs if the recipient administers both Federal awards and CAS-covered contracts.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit organizations in terms of the applicability of cost principles. These nonprofit organizations must operate under Federal cost principles that apply to for-profit organizations located at 48 CFR 31.2. Appendix VIII contains a list of these nonprofit organizations. Other organizations may be added to this list if approved by the cognizant agency for indirect costs.

Basic Considerations

§ 200.402 Composition of costs.

The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs minus any applicable credits.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following criteria to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the recipient or subrecipient.

(d) Be accorded consistent treatment. For example, a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for State and local governments and Indian Tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing requirements of any other federally-financed program in either the current or a prior period. See § 200.306(b).

(g) Be adequately documented. See §§ 200.300 through 200.309.

(h) Administrative closeout costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency. All other costs must be incurred during the approved budget period. At its discretion, the Federal agency is authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods. See § 200.308(g)(3).

§ 200.404 Reasonable costs.

A cost is reasonable if it does not exceed an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration must be given to the following:

(a) Whether the cost is generally recognized as ordinary and necessary for the recipient's or subrecipient's operation or the proper and efficient performance of the Federal award;

(b) The restraints or requirements imposed by such factors as sound business practices; arm's-length bargaining; Federal, State, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable costs for the geographic area; and

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the recipient or subrecipient, its employees, its students or membership (if applicable), the public at large, and the Federal Government.

(e) The degree to which the cost represents a deviation from the recipient's or subrecipient's established written policies and procedures for incurring costs.

§ 200.405 Allocable costs.

(a) *Allocable costs in general.* A cost is allocable to a Federal award if the cost is assignable to that Federal award in accordance with the relative benefits received. This standard is met if the cost satisfies any of the following criteria:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the recipient or subrecipient and can be distributed in proportions that may be approximated using reasonable methods; or

(3) Is necessary to the overall operation of the recipient or subrecipient and is assignable in part to the Federal award in accordance with these cost principles.

(b) *Allocation of indirect costs.* All activities which benefit from the recipient's or subrecipient's indirect cost, including unallowable activities and donated services by the recipient or subrecipient or third parties, will receive an appropriate allocation of indirect costs.

(c) *Limitation on charging certain allocable costs to other Federal awards.* A cost allocable to a particular Federal award may not be charged to other Federal awards (for example, to overcome fund deficiencies or to avoid restrictions imposed by Federal statutes, regulations, or the terms and conditions of the Federal awards). However, this prohibition would not preclude the recipient or subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) *Direct cost allocation principles.* If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. However, when those proportions cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c), the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved, when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

(e) *Costs of contracts subject to CAS.* Costs of contracts subject to CAS must be allocated according to the Cost Accounting Standards, which take precedence over the allocation provisions in this part.

§ 200.406 Applicable credits.

(a) Applicable credits refer to transactions that offset or reduce direct or indirect costs allocable to a Federal award. Examples of such transactions are purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, adjustments of overpayments, or erroneous charges. To the extent that such credits accruing to or received by the recipient or subrecipient relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the recipient or subrecipient should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. See §§ 200.436 and 200.468 for potential application areas.

§ 200.407 Prior written approval (prior approval).

The reasonableness and allocability of certain costs under Federal awards may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the recipient may seek the prior written approval of the Federal agency (or, for indirect costs, the cognizant agency for indirect costs) before incurring the cost. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that cost unless prior approval is specifically required for allowability as described under certain circumstances in the following sections:

(a) Section 200.306 Cost sharing;

(b) Section 200.307 Program income;

(c) Section 200.308 Revision of budget and program plans;

(d) Section 200.333 Fixed amount subawards;

(e) Section 200.430 Compensation—personal services, paragraph (h);

(f) Section 200.431 Compensation—fringe benefits;

(g) Section 200.439 Equipment and other capital expenditures;

(h) Section 200.441 Fines, penalties, damages and other settlements;

(i) Section 200.442 Fund raising and investment management costs;

(j) Section 200.445 Goods or services for personal use;

(k) Section 200.447 Insurance and indemnification;

(l) Section 200.455 Organization costs;

(m) Section 200.458 Pre-award costs;

(n) Section 200.462 Rearrangement and reconversion costs;

(o) Section 200.475 Travel costs.

§ 200.408 Limitation on allowance of costs.

Statutory requirements may limit the allowability of costs. Any costs that exceed the maximum amount allowed by statute may not be charged to the Federal award. Only the amount allowable by statute may be charged to the Federal award.

§ 200.409 Special considerations.

Other sections in this part describe special considerations and requirements applicable to states, local governments, Indian Tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of recipients and subrecipients, as specified in the following sections:

(a) Direct and Indirect Costs (§§ 200.412–200.415);

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417); and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419).

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the awarding Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions provided by the Federal agency or pass-through entity that made the allowability determination. See §§ 200.300 through 200.309, and § 200.346.

§ 200.411 Adjustment of previously negotiated indirect cost rates containing unallowable costs.

(a) Federal negotiated indirect cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made in accordance with the requirements of this section. These adjustments or refunds are intended to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds must be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the recipient or subrecipient, the unallowable costs must be removed from the indirect cost pools and the rates must be adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs must be computed for each year involved, and a cash refund (including interest) must be made to the Federal Government in accordance with the directions provided by the cognizant agency for indirect costs. When cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments must be made when the rates are finalized to avoid duplicate recovery of the unallowable costs.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

Direct and Indirect Costs

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as direct or indirect costs. A cost may be direct for some specific service or function but indirect for the Federal award or other final cost objective. Therefore, each cost incurred for the same purpose in like circumstances must be treated consistently either as a direct or an indirect cost to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as direct or indirect costs. See § 200.405.

(b) *Application to Federal awards.* The association of costs with a Federal award (rather than the nature of the procurement transaction) determines whether costs are direct or indirect. Costs charged directly to a Federal award are typically incurred specifically for that Federal award (including, for example, supplies needed to achieve the award's objectives and the proportion of staff salary expended in relation to that specific award). However, costs that otherwise would be treated as indirect costs may also be considered direct costs if they are directly related to a specific award (including, for example, extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, cybersecurity, integrated data systems, asset management systems, performance management costs, program evaluation costs, or other institutional service operations).

(c) *Administrative and clerical staff salaries.* Administrative and clerical staff salaries should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if they meet all of the following conditions:

(1) The administrative or clerical services are integral to a Federal award;

(2) Individuals involved can be specifically identified with a Federal award; and

(3) The costs are not also recovered as indirect costs.

(d) *Minor items.* A minor direct cost may be treated as an indirect cost when it is practical to do so and provided that it is treated consistently for all Federal and non-Federal purposes.

(e) *Treatment of unallowable costs in determining indirect cost rates.* Unallowable costs for Federal awards must be treated as direct costs when determining indirect cost rates. Additionally, unallowable costs must be allocated their equitable share of the recipient's or subrecipient's indirect costs if they represent activities which:

(1) Include the salaries of personnel;

(2) Occupy space; and

(3) Benefit from the recipient's or subrecipient's indirect costs.

(f) *Treatment of certain costs for nonprofit organizations.* For nonprofit organizations, the costs of activities performed by the nonprofit organization primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See § 200.454.

(2) Providing services and information to members, the government, or the public. See §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See §§ 200.421 and 200.450.

(4) Conferences (except in support of the general administration of the recipient or subrecipient). See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in the recipient's or subrecipient's operation. See also § 200.442.

(6) Group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

§ 200.414 Indirect costs.

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major

nonprofit organizations, indirect costs must be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation on buildings, equipment and capital improvements, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ''Administration'' is defined as general administration and general expenses such as the director's office, accounting, personnel, and all other types of expenditures not listed specifically under one of the subcategories of ''Facilities'' (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the ''Administration'' category; for IHEs, they are included in the ''Facilities'' category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III. Major nonprofit organizations are those which receive more than $10 million in direct Federal funding.

(b) *Diversity of nonprofit organizations.* It is not always possible to specify the types of costs that may be classified as indirect costs for nonprofit organizations due to the diversity of their accounting practices. Identification with a Federal award rather than the nature of the procurement transaction involved is the determining factor in distinguishing direct from indirect costs of Federal awards. However, typical examples of indirect cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See § 200.306.)

(1) Negotiated indirect cost rates must be accepted by all Federal agencies. A Federal agency may only use a rate different from the negotiated rate for either a class of Federal awards or a single Federal award when required by Federal statute, regulation, or when approved by the awarding Federal agency based on documented justification described in paragraph (c)(3) of this section.

(2) The Federal agency must notify OMB of any approved deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.

(3) The Federal agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) The Federal agency must include the policies relating to indirect cost rate reimbursement or cost share as approved under paragraph (e) in the notice of funding opportunity. As appropriate, the Federal agency should incorporate discussion of these policies into its outreach activities with applicants before posting a notice of funding opportunity. See § 200.204.

(d) *Pass-through entities.* Pass-through entities are subject to the requirements in § 200.332(b)(4) and must accept all federally negotiated indirect costs rates for subrecipients.

(e) *Appendices.* Requirements for development and submission of indirect cost rate proposals and cost allocation plans are contained in the following Appendices:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Government-wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) *De minimis rate.* Recipients and subrecipients that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs (MTDC). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies may not require recipients and subrecipients to use a de minimis rate lower than this standard unless required by Federal statute. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. Recipients and subrecipients are not required to use the de minimis rate and may submit an indirect cost proposal in accordance with the appropriate Appendix referenced in paragraph (e) of this section. When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both. The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must use the de minimis rate for all Federal awards until the recipient or subrecipient chooses to receive a negotiated rate. A governmental department or agency that receives more than $35 million in direct Federal funding during its fiscal year may not elect to use the de minimis rate (see Appendix VII, paragraph D.1.b.).

(g) *One-time extension of indirect rates.* A recipient or subrecipient with a current Federal negotiated indirect cost rate may apply for a one-time extension of that agreement for up to four years. This extension will be subject to review and approval by the cognizant agency for indirect costs. If granted, the recipient or subrecipient may only request a rate review when the extension period ends. The recipient or subrecipient must re-apply to negotiate a new rate when the extension ends. When a new rate is negotiated, the recipient or subrecipient may again apply for a one-time extension of the new rate in accordance with this paragraph.

§ 200.415 Required certifications.

(a) Financial reports and payment requests under Federal awards must include a certification, signed by an official who is authorized to legally bind the recipient or subrecipient, which reads as follows: ''By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).''

(b) Subrecipients under the Federal award must certify to the pass-through entity whenever applying for funds, requesting payment, and submitting reports: ''I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited

to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729–3730 and 3801–3812.'' Each such certification must be maintained pursuant to the requirements of § 200.334. This paragraph applies to all tiers of subrecipients.

(c) Certification of cost allocation plan or indirect cost rate proposal. Each cost allocation plan or indirect cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the recipient, must be certified by the recipient using the *Certificate of Cost Allocation Plan* or *Certificate of Indirect Costs* as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the recipient by an individual at a level no lower than the vice president or chief financial officer of the recipient that submits the proposal.

(2) The Federal Government may either disallow all indirect costs or unilaterally establish an indirect cost rate when the recipient fails to submit a certified proposal for establishing a rate. This rate should be based upon audited historical data or other data furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. The rate established must ensure that potentially unallowable costs are not reimbursed. Alternatively, the recipient may use the de minimis indirect cost rate. See § 200.414(f).

(d) Nonprofit organizations must certify that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a), if applicable.

(e) The recipient must certify that the requirements and standards for lobbying (see § 200.450) have been met when submitting its annual indirect cost rate proposal.

Special Considerations for States, Local Governments and Indian Tribes

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) Awards to states, local governments, and Indian Tribes are often implemented at the level of department within the State, local government, or Indian Tribe. A central service cost allocation plan is established to allow such department to claim a portion of centralized service costs that are incurred in proportion to the award's activities. Examples of centralized service costs may include motor pools, computer centers, purchasing, and accounting. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan establishes this process.

(b) Individual departments typically charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate proposal for each operating department is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each operating department of the State, local government, or Indian Tribe carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for developing and submitting cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in Appendices V, VI, and VII of this part.

§ 200.417 Interagency service.

An operating department may provide services to another operating department of the same State, local government, or Indian Tribe. In these instances, the cost of services provided may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost rate equal to 10 percent of the direct salaries and wages for providing the service (excluding overtime, shift premiums, and fringe benefits) may be used instead of determining the actual indirect costs of the service. These services do not include centralized services that are included in central service cost allocation plans described in Appendix V of this part.

Special Considerations for Institutions of Higher Education

§ 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a State or local government on behalf of and in direct benefit to its IHEs are allowable. These costs include but are not limited to fringe benefit programs such as pension costs and Federal Insurance Contributions Act (FICA) costs. These costs are allowable regardless of whether or not they are recorded in the accounting records of the institutions, subject to the following conditions:

(a) The costs meet the requirements of § 200.402—200.411;

(b) The costs are properly supported by approved cost allocation plans in accordance with the applicable cost accounting principles of this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.419 Cost accounting standards.

An IHE that receive an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

General Provisions for Selected Items of Cost

§ 200.420 Considerations for selected items of cost.

(a) This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to other requirements of this subpart. These principles apply whether or not a particular cost item is properly treated as a direct or indirect cost.

(b) The following sections are not intended to be a comprehensive list of potential items of cost encountered under Federal awards. Failure to mention a particular item of cost, including as an example in certain sections, is not intended to imply that it is either allowable or unallowable. When determining the allowability for an item of cost, each case should be based on the treatment provided for similar or related items of cost and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability.

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media includes, but is not limited to, magazines, newspapers, radio and television, direct mail, exhibits, and electronic or computer transmittals.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the recipient or subrecipient for the performance of a Federal award (See also § 200.463);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when the recipient or subrecipient is reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the Federal award requirements.

(c) The term ''public relations'' includes community relations and means those activities dedicated to maintaining the recipient's or subrecipient's image or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press about specific activities or accomplishments which result from the performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities or financial matters.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, conferences, or other events related to other activities of the entity (see also § 200.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia;

(4) Costs of advertising and public relations designed solely to promote the recipient or subrecipient.

§ 200.422 Advisory councils.

An advisory council or committee is a body that provides advice to the management of such entities as corporations, organizations, or foundations. Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal agency, or as an indirect cost where allocable to Federal awards. See § 200.444, which applies to States, local governments, and Indian Tribes.

§ 200.423 Alcoholic beverages.

The cost of alcoholic beverages is unallowable.

§ 200.424 Alumni activities.

Costs incurred by IHEs for, or in support of, alumni activities are unallowable.

§ 200.425 Audits conducted in accordance with the Single Audit Act.

(a) A reasonably proportionate share of the costs of audits required by and performed in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), and the requirements of this part are allowable. However, the following audit costs are unallowable:

(1) Any costs for audits that are not required by and performed in accordance with the Single Audit Act, and the requirements of this part; and

(2) Any costs of auditing a recipient or subrecipient exempt from having an audit conducted under the Single Audit Act and the requirements of this part.

(b) The costs of a financial statement audit of a recipient or subrecipient that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon procedures engagements to monitor subrecipients (in accordance with §§ 200.331–333) exempt from having an audit conducted under the Single Audit Act and the requirements of this part. This cost is allowable only if the agreed-upon procedures engagements are:

(1) Conducted in accordance with GAGAS or applicable international attestation standards, as appropriate;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 200.426 Bad debts.

Bad debts (debts determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts are also unallowable. See § 200.428.

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal agency requires assurance against financial loss to itself or others because of an act or default of the recipient. They also arise when the recipient requires similar assurance, including bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Bonding costs required under the Federal award's terms and conditions are allowable.

(c) Bonding costs required by the recipient in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a recipient or subrecipient to recover improper payments, including improper overpayments, are allowable as either direct or indirect costs, as appropriate. The recipient or subrecipient may use the amounts collected in accordance with cash management standards described in § 200.305.

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as activity costs provided for in Appendix III, (B)(9) Student Administration and Services.

§ 200.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the recipient or subrecipient consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with the recipient's or subrecipient's laws, rules, or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (g) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be reasonable to the extent that it is consistent with that paid for similar work in other activities of the recipient or subrecipient. In cases where the kinds of employees required for Federal awards are not found in the different activities of the recipient or subrecipient, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the recipient or subrecipient competes for the kind of employees involved.

(c) *Professional activities outside the recipient or subrecipient.* Unless the Federal agency expressly authorizes an arrangement, a recipient or subrecipient must follow its written policies and procedures concerning the permissible extent of professional services that can be provided outside the recipient or subrecipient for non-organizational compensation. Where the recipient or subrecipient does not have written policies or procedures, or they do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require the recipient or subrecipient to allocate the effort of professional staff working on Federal awards between:

(1) Recipient or subrecipient activities, and

(2) Non-organizational professional activities. Appropriate arrangements governing compensation must be negotiated on a case-by-case basis if the Federal agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award.

(d) *Unallowable costs.* (1) Costs unallowable under other sections of these principles must not be allowable under this section solely because they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with Federal statute. See 10 U.S.C. 2324(e)(1)(P), 41 U.S.C. 1127, and 41 U.S.C. 4304(a)(16) for the ceiling amount, covered compensation subject to the ceiling, covered employees, and other relevant provisions for cost-reimbursement contracts. For different types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining the allowability of compensation will be given to any change in a recipient's or subrecipient's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, efficient performance, suggestion awards, or safety awards is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued according to an agreement entered into in good faith between the recipient or subrecipient and the employees before the services were rendered, or according to an established plan followed by the recipient or subrecipient so consistently as to imply, in effect, an agreement to make such payment.

(g) *Standards for Documentation of Personnel Expenses.* (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the recipient or subrecipient;

(iii) Reasonably reflect the total activity for which the employee is compensated by the recipient or subrecipient, not exceeding 100 percent of compensated activities (for IHEs, this is the IBS);

(iv) Encompass federally-assisted and all other activities compensated by the recipient or subrecipient on an integrated basis but may include the use of subsidiary records as defined in the recipient's or subrecipient's written policy;

(v) Comply with the established accounting policies and procedures of the recipient or subrecipient (See paragraph (i)(1)(ii) of this section for treatment of incidental work for IHEs.); and

(vi) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(vii) Budget estimates (meaning, estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity performed;

(B) Significant changes in the related work activity (as defined by the recipient's or subrecipient's written policies) are promptly identified and entered into the records. Short-term (such as one or two months) fluctuation between workload categories do not need to be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The recipient's or subrecipient's system of internal controls includes processes to perform periodic after-the-fact reviews of interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated based on actual work performed.

(viii) Because practices vary as to the activity constituting a full workload (for example, IBS for IHEs), records may reflect categories of activities expressed as a percentage distribution of total activities.

(ix) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. Therefore, a precise assessment of factors contributing to costs is not required when IHEs record salaries and wages are charged to Federal awards.

(2) For records that meet the standards required in paragraph (g)(1) of this section, the recipient or subrecipient is not required to provide additional support or documentation for the work performed other than that referenced in paragraph (g)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in

addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) States, local governments, and Indian Tribes may use substitute processes or systems for allocating salaries and wages to Federal awards either in place of or in addition to the records described in paragraph (g)(1) of this section if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, ''rolling'' time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems that use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards, including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (g)(5)(iii);

(B) The sample must cover the entire period involved; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors and clerical and support staff, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts allocated to Federal awards will be minimal or if it concludes that the system proposed by the recipient or subrecipient will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance when these are clearly documented. These plans are acceptable as an alternative to requirements in paragraph (g)(1) of this section when approved by the cognizant agency for indirect costs.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a recipient or subrecipient may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided the plans are approved in advance by all involved Federal agencies. In these instances, the recipient or subrecipient must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a recipient or subrecipient whose records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation supporting the records as required in this section.

(h) *Nonprofit organizations.* This paragraph provides guidance specific to only nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, a determination must be made that the compensation is reasonable for the actual personal services rendered rather than a distribution of earnings above actual costs. Compensation may include director's and executive committee member's fees, incentive awards, off-site or incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(i) *Institutions of Higher Education (IHEs).* This paragraph provides guidance specific to only IHEs.

(1) *Determining allowable personnel costs.* Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) *Allowable activities.* Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etcetera), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) *Incidental activities.* Incidental activities for which supplemental compensation is allowable under the written institutional policy (at a rate not to exceed institutional base salary) do not need to be included in the records described in paragraph (g) to charge payments of incidental activities directly, such activities must either be expressly authorized in the Federal award budget or receive prior written approval by the Federal agency.

(2) *Salary basis.* Charges for work performed on Federal awards by faculty members during the academic year are allowable at the institutional base salary (IBS) rate. Except as noted in paragraph (i)(1)(ii), in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of the faculty at an institution. IBS is the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal agency, charges of a faculty member's salary to a Federal award may not exceed the proportionate share of the IBS for the period during which the faculty member worked on the Federal award.

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty members is in addition to their regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are expressly authorized in the Federal award or approved in writing by the Federal agency.

(4) *Extra service pay.* Extra service pay typically represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay results from Intra-IHE consulting, it is subject to the same requirements of paragraph (b) of this section. It is allowable if all of the following conditions are met:

(i) The IHE establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The IHE establishes a consistent written definition of work covered by IBS, which is specific enough to determine conclusively when work beyond that level has occurred. This definition may be described in appointment letters or other documentation.

(iii) The supplementation amount paid is commensurate with the IBS pay rate and additional work performed. See paragraph (i)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the IHE.

(v) The total salaries charged to Federal awards, including extra service payments, are subject to the standards of documentation as described in paragraph (g).

(5) *Periods outside the academic year.* (i) Except as specified for teaching activity in paragraph (i)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period must be at a rate not more than the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period must be based on the written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty.* Charges for work performed on Federal awards by faculty members having only part-time appointments must be determined at a rate not more than that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follows:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable, provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. These costs must be allocated equitably among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits as a direct charge, the aggregate amount of assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn ''extra service pay'' in accordance with the recipient's written policy and paragraph (i)(1)(i).

§ 200.431 Compensation—fringe benefits.

(a) *General.* Fringe benefits are allowances and services employers provide to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family, sick, or military), employee insurance, pensions, and unemployment benefits. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, an organization-employee agreement, or an established policy of the recipient or subrecipient.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the recipient or subrecipient or a specified grouping of employees.

(i) When a recipient or subrecipient uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment and must be allocated as a general administrative expense to all activities. These costs may be included in fringe benefit rates with the approval of the cognizant agency for indirect costs.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a recipient or subrecipient uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) *Fringe benefits.* The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs; and other similar benefits are allowable, provided such benefits are permitted under established written policies. The recipient or subrecipient must allocate fringe benefits to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs following the recipient's or subrecipient's accounting practices.

(d) *Cost objectives.* The recipient or subrecipient may assign fringe benefits to cost objectives by identifying specific benefits to specific individual employees or by allocating them based on entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees unless the recipient or subrecipient demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation and the types of coverage, the extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The cost of such insurance is unallowable when the recipient or subrecipient is named as beneficiary.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*for example,* post-retirement health benefits) are allowable in the year of payment provided that the recipient or subrecipient follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the recipient or subrecipient that relates to personal use by employees (including transportation to and from work) is unallowable as a fringe benefit or

indirect costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension plan costs.* Pension plan costs incurred in accordance with the established written policies of the recipient or subrecipient are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) The cost assigned to each fiscal year should be determined in accordance with GAAP, except for State and local governments.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. The recipient or subrecipient may follow the ''Cost Accounting Standard for Composition and Measurement of Pension Costs'' (48 CFR 9904.412).

(5) Premiums for pension plan termination insurance that are paid according to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the recipient or subrecipient in excess of the costs calculated using an actuarial cost-based method recognized by GAAP for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(iv) When a recipient or subrecipient establishes or converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) Payments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded pension costs directly to a Federal award if those unfunded pension costs are related to compensation not allocable to that award. In all cases, the payments for unfunded pension costs may not exceed the contribution rate of the employee's current pension costs. Payments for unfunded pension costs may only be charged to a Federal award with the prior approval of the awarding Federal agency or cognizant agency for indirect costs if included as part of an approved negotiated indirect cost rate agreement. The recipient or subrecipient must notify the awarding Federal agency or cognizant agency for indirect costs, as applicable, if unfunded pension costs are re-amortized.

(vi) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed pension costs (including subsequent earnings) that the recipient or subrecipient receives through a refund, withdrawal, or other credit.

(h) *Post-retirement health.* A post-retirement health plan (PRHP) refers to the costs of health insurance or health services not included in a pension plan covered by paragraph (g) for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in the current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded by the recipient or subrecipient in excess of the costs calculated using an actuarial cost-based method recognized by GAAP for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(4) If a recipient or subrecipient establishes or converts to an actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) Payments for unfunded PRHP costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded PRHP costs directly to a Federal award if those unfunded PRHP costs are related to compensation not allocable to that award. In all cases, the payments for unfunded PHRP costs may not exceed the contribution rate of the employee's current health benefit costs. Payments for unfunded PRHP costs may only be charged to a Federal award with the prior approval of the awarding Federal agency or cognizant agency for indirect costs if included as part of an approved negotiated indirect cost rate agreement. The recipient or subrecipient must notify the awarding Federal agency or cognizant agency for indirect costs, as applicable, if unfunded PHRP costs are re-amortized.

(6) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums; or

(ii) An insurer or trustee that will maintain a trust fund or reserve for the sole purpose of providing post-

retirement benefits to retirees and other beneficiaries.

(7) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed post-retirement benefit costs (including subsequent earnings) that the recipient or subrecipient receives through a refund, withdrawal, or other credit.

(i) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by recipients and subrecipients to workers whose employment is being terminated. Severance pay is allowable only to the extent that, in each case, it is required by:

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the recipient's or subrecipient's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual severance payments for normal turnover must be allocated to all activities; or, where the recipient or subrecipient provides for a reserve for normal severances, such method is acceptable if the charge to current operations is reasonable in light of payments made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the recipient or subrecipient.

(ii) Measuring the costs of abnormal or mass severance pay by means of an accrual method will not achieve equity for both parties. Therefore, accruals are not allowable. However, the Federal Government recognizes its responsibility to contribute its fair share toward a specific payment. Prior approval by the Federal agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in severance pay packages that are in excess of the standard severance pay provided by the recipient or subrecipient to an employee upon termination of employment and that are paid to the employee contingent upon a change in management control over, or ownership of, the recipient's or subrecipient's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the recipient or subrecipient in the United States, are unallowable unless they are required by applicable foreign law or necessary for the performance of Federal programs and approved by the Federal agency.

(5) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the recipient or subrecipient in that country, are unallowable unless they are required by applicable foreign law or necessary for the performance of Federal programs and approved by the Federal agency.

(j) *For IHEs only.* (1) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees are allowable, provided such benefits are granted in accordance with established written policies of the IHE and are distributed to all IHE activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees not employed by the IHE are limited to the tax-free amount allowed by the Internal Revenue Code as amended (26 U.S.C. 127).

(3) IHEs may offer employees tuition waivers or reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) *Fringe benefit programs and other benefit costs.* For IHEs whose costs are paid by a State or local government, fringe benefit programs (such as pension costs and FICA) and any other benefits costs incurred specifically on behalf of, and in direct benefit to, the IHE, are allowable. These costs do not need to be recorded in the accounting records of the IHE but are subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.432 Conferences.

A conference means an event whose primary purpose is to disseminate technical information beyond the recipient or subrecipient and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the recipient or subrecipient as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other incidental items to such conferences unless further restricted by the terms and conditions of the Federal award. The costs of identifying and providing locally available dependent-care resources for participants are allowable as needed. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed to minimize costs to the Federal award. The Federal agency may authorize exceptions for programs including Indian Tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

§ 200.433 Contingency provisions.

(a) Contingency provisions are part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items approved by the Federal agency) which are associated with possible events or conditions arising from causes for which the precise outcome is indeterminable at the time of estimate and that are likely to result, in the aggregate, in additional costs for the approved activity or project. Contingency costs for major project scope changes, unforeseen risks, or extraordinary events are not allowable.

(b) It is permissible for contingency costs other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates to the extent necessary to improve their precision. Contingency costs must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements of this part (see §§ 200.300 and 200.403), be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the recipient's or subrecipient's records.

(c) Payments to a recipient's or subrecipient's ''contingency reserve'' or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the recipient or subrecipient to other entities are unallowable.

(b) The value of services and property donated (including in-kind) to the recipient or subrecipient may not be charged to the Federal award either as a direct or indirect cost. The value of donated services and property may be used to meet cost sharing requirements (see § 200.306). Depreciation on donated assets is permitted so long as the donated property is not counted towards meeting cost sharing requirements (see § 200.436).

(c) Services donated or volunteered to the recipient or subrecipient may be provided by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the recipient or subrecipient will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to a nonprofit organization and used in the performance of a direct cost activity must be considered in the determination of the recipient's or subrecipient's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the recipient or subrecipient;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient or subrecipient and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the project's total costs. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing requirements.

(f) Fair market value of donated services must be computed as described in § 200.306.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a recipient or subrecipient. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing requirements described in § 200.300. The recipient or subrecipient must value the donations in accordance with § 200.300. Where the recipient or subrecipient treats donations as indirect costs, indirect cost rates must separate the value of the donations so that reimbursement is not made.

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) *Definitions for this section*—(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the recipient or subrecipient before, during, and after the commencement of a judicial or administrative proceeding that bears a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts that violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (42 U.S.C. 1320a–7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs.* (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil, or administrative proceeding (including the filing of a false certification) commenced by the Federal Government, a State, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the recipient or subrecipient, (or commenced by third parties or a current or former employee of the recipient or subrecipient who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 4701 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute, regulation, or the terms and conditions of the Federal award by the recipient or subrecipient (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of recipient or subrecipient liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs, the imposition of a monetary penalty, or an order issued by the Federal agency head or delegate to the recipient or subrecipient to take corrective action under 10 U.S.C. 4701 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the recipient or subrecipient, to rescind or void a Federal award, or to terminate a Federal award because of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) *Allowability of costs for proceeding commenced by Federal Government.* If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the recipient or subrecipient and the Federal Government, then the costs incurred may be allowed to the extent expressly authorized in the agreement.

(d) *Allowability of costs for proceeding commenced by State, local, or foreign government.* If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, then the costs incurred may be allowed if the authorized Federal official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal agency.

(e) *Allowability of costs in general.* Costs incurred in connection with proceedings described in paragraph (b), and that are not unallowable, may be allowable to the extent that:

(1) The costs are reasonable and necessary for the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and other factors that may be appropriate. This percentage must not exceed 80 percent unless the agreement under paragraph (c) has explicitly considered this limitation and permitted a higher percentage. In that case, the total amount of costs incurred may be allowable.

(f) *Major Fraud Act.* Costs incurred by the recipient or subrecipient in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make the employee whole, where the recipient or subrecipient was found liable or settled, are unallowable.

(g) *Un-allowability of costs for prosecuting claims against Federal Government.* Costs for prosecuting claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) *Costs of legal, accounting, consultant services.* Costs of legal, accounting, consultant services, and related costs incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) *Potentially unallowable costs.* Costs that may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon a provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The recipient or subrecipient may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP provided that they are needed and used in the recipient's or subrecipient's activities and correctly allocated to Federal awards. The compensation must be made by computing the proper depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX of this part.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the recipient or subrecipient by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as cost sharing but not both. When computing depreciation charges, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the recipient or subrecipient that is already claimed as cost sharing or where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as the type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency for indirect costs. The depreciation methods used to calculate the depreciation amounts for indirect cost rate purposes must be the same methods used by the recipient or subrecipient for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component may be depreciated over its estimated useful life in this case. The building components must be grouped into three general components: building shell (including construction and design costs), building services systems (for example, elevators, HVAC, and plumbing system), and fixed equipment (for example, sterilizers, casework, fume hoods, cold rooms, and glassware/washers). A cognizant agency for indirect costs may authorize a recipient or subrecipient to use more than these three groupings in exceptional cases. When a recipient or subrecipient elects to depreciate its buildings by their components, the same depreciation method must be used for indirect and financial statements purposes, as described in paragraphs (d)(1) and (2).

(4) No depreciation may be allowed on assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life meaning, from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods before the conversion from the use allowance method and depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Adequate property records must support depreciation charges, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. The recipient or subrecipient may use statistical sampling techniques when taking these inventories. In addition, the recipient or subrecipient must maintain adequate depreciation records showing the amount of depreciation.

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the recipient's or subrecipient's established written policies for improving working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) These costs must be equitably apportioned to all activities of the recipient or subrecipient. Income generated from these activities must be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the recipient's or subrecipient's objective is to operate food services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only when:

(1) The recipient or subrecipient can demonstrate unusual circumstances; and

(2) Approved by the cognizant agency for indirect costs.

§ 200.438 Entertainment and prizes.

(a) *Entertainment costs.* Costs of entertainment, including amusement, diversion, and social activities and any associated costs (such as gifts), are unallowable unless they have a specific and direct programmatic purpose and are included in a Federal award.

(b) *Prizes.* Costs of prizes or challenges are allowable if they have a specific and direct programmatic purpose and are included in the Federal award. Federal agencies should refer to OMB guidance in M–10–11 ''Guidance on the Use of Challenges and Prizes to Promote Open Government,'' issued March 8, 2010, or its successor.

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of capital expenditures, equipment, special purpose equipment, general purpose equipment, acquisition cost, *and* capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general-purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $10,000 or more have the prior written approval of the Federal agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal agency or pass-through entity. See § 200.436 on the allowability of depreciation on buildings, capital improvements, and equipment. See § 200.465 on the allowability of real property and equipment rental costs.

(4) When approved as a direct charge in accordance with paragraphs (b)(1) through (3), capital expenditures must be charged in the period in which the expenditure is incurred or as otherwise determined appropriate and negotiated with the Federal agency.

(5) The recipient or subrecipient may claim the unamortized portion of any equipment written off as a result of a change in capitalization levels by continuing to claim the otherwise allowable depreciation on the equipment or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the Federal agency instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

§ 200.440 Exchange rates.

Cost increases for fluctuations in the exchange rate are allowable costs subject to funding availability. The recipient or subrecipient must conduct reviews of fluctuations in the exchange rate to determine if there is the need for additional Federal funding before the end date of the Federal award. Subsequent adjustments for currency increases may be allowed only when the recipient or subrecipient provides the Federal agency or pass-through entity with adequate source documentation from a commonly used source in effect when the cost was incurred and to the extent that sufficient Federal funds are available.

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from recipient or subrecipient violations of, alleged violations of, or failure to comply with, Federal, State, local, tribal, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with the prior written approval of the Federal agency. See § 200.435.

§ 200.442 Fundraising and investment management costs.

(a) Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions, are unallowable. Fundraising costs for meeting the Federal program objectives are allowable with the prior written approval of the Federal agency.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds, which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fundraising and investment activities must be allocated as an appropriate share of indirect costs in accordance with § 200.413.

§ 200.443 Gains and losses on the disposition of depreciable assets.

(a) The recipient or subrecipient must include gains and losses on the sale, retirement, or other disposition of depreciable property in the year they occur as credits or charges to the asset cost grouping(s) of the property. The amount of the gain or loss is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

(2) The property is given in exchange as part of the purchase price of a similar item, and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from failing to maintain proper insurance, except as provided in § 200.447.

(4) Compensation for the use of the property was provided through use allowances instead of depreciation.

(5) Gains and losses arising from extraordinary or bulk sales, retirements, or other dispositions must be considered on an individual basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section

must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316.

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable except as provided in § 200.475. Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a local government or the chief executive of an Indian Tribe;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, or school board, whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation. However, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435; and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided as a direct cost under a program statute or regulation.

(b) Indian Tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1) may include up to 50 percent of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and their staff in the indirect cost calculation without documentation.

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for the personal use of the recipient's or subrecipient's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Housing costs (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, these costs must be approved in advance by a Federal agency to be allowable.

§ 200.446 Idle facilities and idle capacity.

(a) Definitions for the purpose of this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the recipient or subrecipient.

(2) Idle facilities mean completely unused facilities that exceed the recipient's or subrecipient's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means maintenance, repair, housing, rent, and other related costs (for example, insurance, interest, and depreciation). These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load (for example, consolidated data centers).

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate, and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under this exception, costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. These costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained by the terms and conditions of the Federal award are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) The types, extent, and cost of coverage are in accordance with the recipient's or subrecipient's established written policy and sound business practices.

(2) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal agency has approved the costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only when the insurance represents additional compensation (see § 200.431). This insurance is unallowable when the recipient or subrecipient is identified as the beneficiary.

(5) Insurance costs to correct defects in the recipient's or subrecipient's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of a Federal research program only when the program involves human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and assigned to individual projects based on how the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable unless expressly authorized in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small

hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for a self-insurance program, including workers' compensation, unemployment compensation, and severance pay, are allowable subject to the following requirements:

(1) The type, extent, and cost of coverage and the rates and premiums would have been allowed had the insurance (including reinsurance) been purchased to cover the risks. However, a provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by considering factors such as the recipient's or subrecipient's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, and other relevant factors or information. Reserve levels related to employee-related coverages must normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels exceeding the above-mentioned value must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to the types of insured risk and losses generated by the various insured activities or agencies of the recipient or subrecipient. If individual departments or agencies of the recipient or subrecipient experience significantly different levels of claims for a particular risk, those differences must be recognized by using separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (for example, general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with the claims collection regulations of the cognizant agency for indirect cost.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the recipient or subrecipient against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the recipient or subrecipient only to the extent expressly provided for in the Federal award, except as provided in paragraph (c).

§ 200.448 Intellectual property.

(a) *Patent and copyright costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where the Federal Government requires that a title or a royalty-free license be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See § 200.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for the use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid or administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness when the royalties may have been obtained as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the recipient or subrecipient.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a recipient or subrecipient.

(3) In any case involving a patent or copyright formerly owned by the recipient or subrecipient, the amount of royalty allowed must not exceed the cost which would have been allowed had the recipient or subrecipient retained the title.

§ 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the recipient's or subrecipient's own funds are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the requirements of this section.

(b) *Capital assets.* (1) Capital assets is defined in § 200.1. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For recipient or subrecipient fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all recipients and subrecipients.* (1) The recipient or subrecipient uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the recipient or subrecipient from an unrelated (arm's length) third party.

(3) The recipient or subrecipient obtains the financing via an arm's-length transaction (meaning, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The recipient or subrecipient limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The recipient or subrecipient expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over $1 million to purchase or construct facilities unless the recipient or subrecipient makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, ''initial equity contribution'' means the amount or value of contributions made by the recipient or subrecipient for the acquisition of facilities prior to occupancy.

(i) The recipient or subrecipient must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The recipient or subrecipient must impute interest on excess cash flow as follows:

(A) Annually, the recipient or subrecipient must prepare a cumulative (from the project's inception) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the recipient or subrecipient must divide the above-mentioned annual amounts by the months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The interest rate to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) *Additional conditions for states, local governments and Indian Tribes.* For interest costs to be allowable for states, local governments, and Indian Tribes, the recipient or subrecipient must have incurred the interest costs for buildings after October 1, 1980, or after September 1, 1995, for land and equipment.

(1) The requirement to offset the interest earned on borrowed funds against allowable interest cost (paragraph (c)(5) of this section) also applies to earnings on debt service reserve funds.

(2) The recipient or subrecipient must negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as described in paragraph (c)(7) of this section. For this purpose, a recipient or subrecipient must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) *Additional conditions for IHEs.* For interest costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) *Additional condition for nonprofit organizations.* For interest costs to be allowable, the nonprofit organization must have incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to ''full coverage'' under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201–2(a). The nonprofit organization's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), ''Cost of Money as an Element of the Cost of Facilities Capital,'' and CAS 417 (48 CFR 9904.417), ''Cost of Money as an Element of the Cost of Capital Assets Under Construction.''

§ 200.450 Lobbying.

(a) *Lobbying costs associated with obtaining Federal assistance awards.* The costs of certain influencing activities associated with obtaining grants, cooperative agreements, contracts, or loans are unallowable. Lobbying with respect to certain grants, cooperative agreements, contracts, and loans is governed by relevant statutes, including the provisions of 31 U.S.C. 1352, as well as the common rule, ''New Restrictions on Lobbying,'' published on February 26, 1990, including definitions, and the Office of Management and Budget ''Government-wide Guidance for New Restrictions on Lobbying'' and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merit.

(c) *Restrictions on nonprofit organizations and IHEs.* In addition, the following restrictions apply to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established to influence the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or State legislation;

(B) The enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or State legislation by preparing, distributing, or using publicity or propaganda or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are

carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient's or subrecipient's member of congress, legislative body, subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence State legislation to directly reduce the cost, or to avoid material impairment of the recipient's or subrecipient's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of ''lobbying'' or ''influencing legislation'' by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and ''grass roots'' lobbying activities to retain their charitable deduction status and avoid punitive excise taxes, 26 U.S.C. (I.R.C.) 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. 4911(d)(2) and 26 CFR 56.4911–2(c)(1) through (c)(3).

(v) When a recipient or subrecipient seeks reimbursement for indirect costs, total lobbying costs must be identified separately in the indirect cost rate proposal and thereafter be treated as other unallowable activity costs in accordance with § 200.413.

(vi) The recipient or subrecipient must submit a certification that the requirements and standards of this section have been complied with as part of its annual indirect cost rate proposal. (See § 200.415.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record-keeping requirements in § 200.302 with respect to lobbying costs during a particular calendar month when:

(*1*) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) for 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(*2*) Within the preceding five-year period, the recipient or subrecipient has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, recipients and subrecipients are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) In consultation with OMB, the Federal agency must establish procedures for resolving, in advance, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or recipient or subrecipient from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the recipient's or subrecipient's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another is unallowable. All losses are not allowable indirect costs and must be included in the appropriate indirect cost rate base for allocating indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements that add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary for the performance of a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are an allowable part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. Charging computing devices as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where Federally-donated or furnished materials are used in performing the Federal award, the materials will be used without charge.

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the recipient's or subrecipient's membership in business, technical, and professional organizations are allowable.

(b) Costs of the recipient's or subrecipient's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See § 200.450.

§ 200.455 Organization costs.

(a) Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the recipient or subrecipient in connection with the establishment or reorganization of an organization, are unallowable except with prior approval of the Federal agency.

(b) The costs of any activities undertaken to persuade employees of the recipient or subrecipient, or any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing, are unallowable.

(c) The costs related to data and evaluation are allowable and include (but are not limited to) the expenditures needed to gather, store, track, manage, analyze, disaggregate, secure, share, publish, or otherwise use data to administer or improve the program, such as data systems, personnel, data dashboards, cyber security, and related items. Data costs may also include direct or indirect costs associated with building integrated data systems—data systems that link individual-level data from multiple State and local government agencies for purposes of management, research, and evaluation.

§ 200.456 Participant support costs.

Participant support costs are allowable (see § 200.1). The classification of items as participant support costs must be documented in the recipient's or subrecipient's written policies and procedures and treated consistently across all Federal awards.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for the protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

§ 200.458 Pre-award costs.

Pre-award costs are those incurred before the start date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. These costs are allowable only to the extent that they would have been allowed if incurred after the start date of the Federal award and only with the prior written approval of the Federal agency. If approved, these costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency or pass-through entity.

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the recipient or subrecipient are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

(b) In determining the allowability of costs in a particular case, no single factor or any combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the recipient's or subrecipient's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to receiving a Federal award(s).

(4) The impact of Federal awards on the recipient's or subrecipient's business (meaning, what new problems have arisen).

(5) Whether the proportion of Federal work to the recipient's or subrecipient's total business influences the recipient or subrecipient in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or entity providing the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (for example, description of the service, estimate of the time required, rate of compensation, and termination provisions).

(c) To be allowable, retainer fees must be supported by evidence of bona fide services available or rendered in addition to the factors in paragraph (b) of this section.

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including developing data necessary to support the recipient's or subrecipient's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated to all current activities of the recipient or subrecipient. No proposal costs of past accounting periods may be allocated to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling, are allowable. These costs should be allocated as indirect costs to all benefiting activities of the recipient or subrecipient if they are not identifiable with a particular cost objective.

(b) Page charges, article processing charges, or similar open access fees for professional journal publications and other peer-reviewed publications developed under a Federal award are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The recipient or subrecipient may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs were not incurred during the period of performance of the Federal award. If incurred, these costs must be charged to the final budget period of the award unless otherwise specified by the Federal agency.

§ 200.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations are allowable as a direct cost if the costs are incurred specifically for a Federal award and with the prior approval of the Federal agency or pass-through entity.

(b) Costs incurred in restoring or rehabilitating the recipient's or subrecipient's facilities to approximately the same condition

existing immediately before the commencement of a Federal award(s), less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of ''help wanted'' advertising, operating costs of an employment office necessary to secure and maintain adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the recipient's or subrecipient's standard recruitment program. When the recipient or subrecipient uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the recipient or subrecipient, are unallowable.

(c) If relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of the cost. See § 200.464.

(d) Short-term visa costs (as opposed to longer-term immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose and can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the recipient's or subrecipient's cost accounting practices and established written policy; and

(4) Meet the definition of ''direct cost'' as described in the applicable cost principles.

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of their immediate family and their household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incidental to the disposition of the employee's former home. These costs, together with those described in paragraph (b)(4) of this section, are limited to eight percent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. If relocation costs incurred incident to the recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of the cost. If a new employee is relocating to an overseas location and dependents are not permitted for any reason, and the costs do not include transporting household goods, the costs must be considered travel costs in accordance with § 200.474, not relocation costs under § 200.464).

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as costs of comparable rental properties; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and if other options are available.

(b) Rental costs under ''sale and lease back'' arrangements are allowable only up to the amount allowed if the recipient or subrecipient had continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under ''less-than-arm's-length'' leases are allowable only up to the amount described in paragraph (b) of this section. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement can control or substantially influence the actions of the other. Such leases include, but are not limited to, those between:

(1) Divisions of the recipient or subrecipient;

(2) The recipient or subrecipient under common control through common officers, directors, or members; and

(3) The recipient or subrecipient and a director, trustee, officer, or key employee of the recipient or subrecipient or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the recipient or subrecipient may establish

a separate corporation to own property and lease it back to the recipient or subrecipient.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse and parents thereof;

(ii) Children and spouses thereof;

(iii) Parents and spouses thereof;

(iv) Siblings and spouses thereof;

(v) Grandparents and grandchildren and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under GAAP are allowable only up to the amount (described in paragraph (b) of this section) allowed if the recipient or subrecipient had purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable if they meet the criteria in § 200.449. Unallowable costs include costs that would not have been incurred if the recipient or subrecipient had purchased the property, such as amounts paid for profit, management fees, and taxes.

(e) Rental or lease payments are allowable under lease contracts where the recipient or subrecipient is required to recognize an intangible right-to-use lease asset under GASB standards or right-of-use operating lease workspace asset under GAAP for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the recipient or subrecipient, including commercial or residential real estate, for purposes such as the home office is unallowable.

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and student aid programs at IHEs are allowable only when the purpose of the Federal award is to provide training to participants, and the Federal agency approves the cost. However, tuition remission and other forms of compensation paid as, or instead of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with the established written policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) The student is enrolled in an advanced degree program at the IHE or an affiliated institution during the academic period and the student's activities under the Federal award are related to their degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) The IHE compensates students under Federal awards as well as other activities in similar manners.

(b) Charges for tuition remission and other forms of compensation paid to students as, or instead of, salaries and wages are subject to the reporting requirements in § 200.430. The charges must be treated as a direct or indirect cost in accordance with the actual work performed. Tuition remission may be charged on an average rate basis. See § 200.431.

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the recipient or subrecipient are unallowable unless they are allowed under § 200.421 and are necessary to meet the requirements of the Federal award.

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the recipient or subrecipient are allowable provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section and take into account any items of income or Federal financing that qualify as applicable credits under § 200.406. These costs include charges for facilities such as computing facilities, wind tunnels, and reactors.

(b) The costs of such services, when material, must be charged directly to the applicable Federal awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the recipient or subrecipient, including usage by the recipient or subrecipient for internal purposes; and

(2) Is designed to recover only the aggregate costs of the services. Each service's costs must normally consist of its direct costs and an allocable share of all indirect costs. Rates must be adjusted at least biennially and must consider any over or under-applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect costs.

(d) Under extraordinary circumstances, the cognizant agency for indirect costs and the recipient or subrecipient may negotiate and establish an alternative costing arrangement if it is in the Federal Government's best interest.

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities are unallowable unless expressly authorized in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) *For States, local governments, and Indian Tribes.* (1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are, in effect, user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal agency to identify taxes where Federal participation is inappropriate. The cognizant agency for indirect costs may accept a reasonable approximation in circumstances where determining the amount of unallowable taxes would require an excessive amount of effort.

(b) *For nonprofit organizations and IHEs.* (1) Taxes that the recipient or subrecipient is required to pay and which are paid or accrued in accordance with GAAP are generally allowable. These costs include payments made to local governments instead of taxes and that are commensurate with the local government services received. The following taxes are unallowable:

(i) Taxes for which exemptions are available to the recipient or subrecipient directly or which are available to the recipient or subrecipient based on an exemption afforded the Federal Government and, in the latter case, when the Federal agency makes available the necessary exemption certificates;

(ii) Special assessments on land which represent capital improvements; and

(iii) Federal income taxes.

(2) Any refund of taxes and interest thereon, which were allowed as Federal

award costs, must be credited to the Federal Government as a cost reduction or cash refund, as appropriate. However, any interest paid or credited to a recipient or subrecipient incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the Federal Government has reimbursed the recipient or subrecipient for the taxes, interest, and penalties.

(c) *Value Added Tax (VAT).* Foreign taxes charged for procurement transactions that a recipient or subrecipient is legally required to pay in a country is allowable. Foreign tax refunds or applicable credits under Federal awards refer to receipts or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the recipient or subrecipient relate to allowable cost, these costs must be credited to the Federal agency as a cost reduction or cash refunds, as appropriate. In cases where the costs are credited back to the Federal award, the recipient or subrecipient may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, the Federal agency may allow the recipient or subrecipient to use the foreign government tax refund for approved activities under the Federal award.

§ 200.471 Telecommunication and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

§ 200.472 Termination and standard closeout costs.

(a) *Termination Costs.* Termination of a Federal award generally gives rise to the incurrence of costs or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They must be used in conjunction with the other termination requirements of this part.

(1) The cost of items reasonably usable on the recipient's or subrecipient's other work is unallowable unless the recipient or subrecipient submits evidence that it would not retain such items without sustaining a loss. In deciding whether such items are reasonably usable on other work of the recipient or subrecipient, the Federal agency or pass-through entity should consider the recipient's or subrecipient's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the recipient or subrecipient must be considered evidence that the items are reasonably usable on the recipient's or subrecipient's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order do not exceed the reasonable quantitative requirements of other work.

(2) If the recipient or subrecipient cannot discontinue certain costs immediately after the effective termination date, despite making all reasonable efforts, then the costs are generally allowable within the limitations of this part. Any costs continuing after termination due to the negligent or willful failure of the recipient or subrecipient to immediately discontinue the costs are unallowable.

(3) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(i) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the recipient or subrecipient;

(ii) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal agency (see § 200.313 (d)); and

(iii) The loss of useful value for one terminated Federal award is limited to the portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(4) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(i) The amount of claimed rental costs does not exceed the reasonable use value of the property leased for the period of the Federal award and a further period as may be reasonable; and

(ii) The recipient or subrecipient makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease. The cost of alterations of the leased property provided they were necessary for the performance of the Federal award, and the cost of reasonable restoration required by the lease may be included.

(5) The following settlement expenses are generally allowable.

(i) Accounting, legal, clerical, and similar costs that are reasonably necessary for:

(A) The preparation and presentation to the Federal agency or pass-through entity of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see §§ 200.339–200.343); and

(B) The termination and settlement of subawards.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(6) Claims under subawards, including the allocable portion of claims common to the Federal award and other work of the recipient or subrecipient, are generally allowable. An appropriate share of the recipient's or subrecipient's indirect costs may be allocated to the amount of settlements with contractors and subrecipients, provided that the amount allocated is consistent with the requirements of § 200.414. These allocated indirect costs must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

(b) *Closeout Costs.* Administrative costs associated with the closeout activities of a Federal award are allowable. The recipient or subrecipient may charge the Federal award during the closeout for the necessary administrative costs of that Federal award (for example, salaries of personnel preparing final reports, publication and printing costs, and the costs associated with the disposition of equipment and property). These costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

§ 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating to goods purchased, in process, or delivered, are allowable. When the costs can be readily identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. When identification with the materials received cannot be readily identified, the inbound transportation cost may be charged to the appropriate indirect cost accounts if the recipient or subrecipient follows a consistent, equitable procedure in this respect. If reimbursable under the terms and conditions of the Federal award, outbound freight should be treated as a direct cost.

§ 200.475 Travel costs.

(a) *General.* Travel costs include the transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the recipient or subrecipient. These costs may be charged on an actual cost basis, a per diem or mileage basis, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip. The method used must be consistent with those normally allowed in like circumstances in the recipient's or subrecipient's other activities and in accordance with the recipient's or subrecipient's established written policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the recipient or subrecipient in its regular operations as the result of the recipient's or subrecipient's established written policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary for the Federal award; and

(2) The costs are reasonable and consistent with the recipient's or subrecipient's established written policy.

(c) *Dependent costs.* (1) Temporary dependent care costs (dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the recipient's or subrecipient's established written policy for all travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of six months or more with prior approval of the Federal agency. See § 200.432.

(d) *Establishing rates and amounts.* In the absence of an established written policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11 (''Travel and Subsistence Expenses; Mileage Allowances''), by the Administrator of General Services, or by the President (or their designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The recipient or subrecipient must justify and document these conditions on a case-by-case basis for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a recipient's or subrecipient's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the recipient or subrecipient can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Travel costs by recipient or subrecipient-owned, -leased, or -chartered aircraft include the cost of the lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of these costs that exceed the cost of airfare, as provided for in paragraph (d), is unallowable.

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See § 200.475.

Subpart F—Audit Requirements

General

§ 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

Audits

§ 200.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends $1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends $1,000,000 in Federal awards during its fiscal year must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) or (d) of this section.

(c) *Program-specific audit election (in general).* A non-Federal entity may elect to have a program-specific audit conducted in accordance with § 200.507 if the following conditions are met:

(1) The non-Federal entity expends Federal awards under only one Federal program (excluding research and development); and

(2) The Federal program's statutes or regulations, or terms and conditions of the Federal award, do not require a financial statement audit of the non-Federal entity.

(d) *Program-specific audit election for research and development.* A non-Federal entity may elect to have a program-specific audit for research and development conducted in accordance with § 200.507, but only if all of the following conditions are met:

(1) The non-Federal entity expends Federal awards only from the same Federal agency, or the same Federal agency and the same pass-through entity; and

(2) The Federal agency, or pass-through entity in the case of a subrecipient, approves a program-specific audit in advance.

(e) *Exemption when Federal awards expended are less than $1,000,000.* A non-Federal entity that expends less than $1,000,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted in § 200.503. However, in all instances, the records of the non-Federal entity must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and the Government Accountability Office (GAO).

(f) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(g) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. Payments received for goods or services provided as a contractor under a Federal award (see § 200.331) are not subject to audit under this part.

(h) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of a Federal award. Federal award compliance requirements normally do not flow down to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions that require a contractor to be responsible for program compliance and the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include a determination that these transactions comply with Federal statutes, regulations, and the terms and conditions of a Federal award.

(i) *For-profit subrecipient.* This part does not apply to for-profit organizations. As necessary, the pass-through entity is responsible for establishing requirements to ensure compliance by for-profit subrecipients. The subaward with a for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring throughout the performance of the subaward, and post-award audits (see § 200.332).

§ 200.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity related to the Federal award pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as:

(1) Expenditure/expense transactions associated with grants, cooperative agreements, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, and direct appropriations;

(2) The disbursement of funds to subrecipients;

(3) The use of loan proceeds under loan and loan guarantee programs;

(4) The receipt of property (including surplus property);

(5) The receipt or use of program income;

(6) The distribution or use of food commodities;

(7) The disbursement of amounts entitling the non-Federal entity to an interest subsidy; and

(8) The period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Loan and loan guarantees retain their Federal character through the end of the Federal award period of performance unless otherwise specified in statute or Federal agency regulations. The Federal Government is at risk for loans until the debt is repaid. Therefore, the following guidelines must be used to calculate the value of Federal awards expended under loan programs (except as noted in paragraphs (c) and (d)):

(1) The value of new loans made or received during the audit period; plus

(2) The balance of loans from previous years at the beginning of the audit period for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at Institutions of Higher Education (IHE).* When loans are made to students of an IHE, but the IHE itself does not have continuing compliance requirements for the loans, then only the value of loans made during the audit period are considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds that are federally restricted is considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and is subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance (such as free rent, food commodities, donated property, or donated surplus property that is received as part of a Federal award to carry out a Federal program) must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency and must be included in determining Federal awards expended under this part

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans from the National Credit Union Share Insurance Fund and the Central Liquidity Facility funded by contributions from insured non-Federal entities are not considered Federal awards expended.

§ 200.503 Relation to other audit requirements.

(a) *Other financial audits.* An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such an audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a

Federal agency must rely upon and use that information.

(b) *Conducting additional audits.* Notwithstanding paragraph (a) of this section, a Federal agency, Inspectors General, or GAO may conduct or arrange additional audits to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits not to be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors.

(c) *Authority to conduct additional audits.* The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal officials. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) *Federal agency to pay for additional audits.* A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) *Request for a program to be audited as a major program.* A Federal agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. Such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited to allow for planning. After consultation with its auditor, the auditee should promptly respond to such a request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. With approval of the Federal agency, a pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 200.504 Frequency of audits.

Audits required by this part must be performed annually except as provided in paragraphs (a) and (b) of this section:

(a) A State, local government, or Indian Tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo biennial (every other year) audits pursuant to this part. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo biennial audits pursuant to this part. Biennial audits must cover both fiscal years within the biennial period.

§ 200.505 Remedies for noncompliance.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies or pass-through-through entities must take appropriate action as provided in § 200.339.

§ 200.506 Audit costs.

See § 200.425.

§ 200.507 Program-specific audits.

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor concerning internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement (Appendix VI, Program-Specific Audit Guides). When a current program-specific audit guide is available, the auditor must follow Generally Accepted Government Auditing Standards (GAGAS) and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a current program-specific audit guide is not available, the auditee and auditor must basically have the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements for a major program in accordance with§ 200.514(c);

(iii) Determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements for a major program under § 200.514(d);

(iv) Follow up on prior audit findings and perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511 When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.; and

(v) Report any audit findings consistent with the requirements of § 200.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance that includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal

awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) *Report submission for program-specific audits.* (1) *Audit period.* The audit must be completed and submitted in accordance with paragraph (c)(2) or (c)(3) of this section. Unless a different period is specified in the program-specific audit guide, the audit must be submitted within 30 calendar days after receiving the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). The reporting package is due the next business day when the due date falls on a Saturday, Sunday, or Federal holiday. Unless restricted by Federal law or regulation, the auditee must make copies of the report(s) available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) *Program-specific audit guide available.* When a program-specific audit guide is available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b), as applicable to the program-specific audit, to the Federal Audit Clearinghouse (FAC). The submission must also include the reporting required by the program-specific audit guide.

(3) *Program-specific audit guide not available.* When a program-specific audit guide is not available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b) to the FAC. The submission must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, a corrective action plan as described in paragraph (b)(2), and the auditor's report(s) described in paragraph (b)(4).

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

(1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);

(2) 200.504 Frequency of audits through 200.506 Audit costs;

(3) 200.508 Auditee responsibilities through 200.509 Auditor selection;

(4) 200.511 Audit findings follow-up;

(5) 200.512 Report submission, paragraphs (e) through (h);

(6) 200.513 Responsibilities;

(7) 200.516 Audit findings through 200.517 Audit documentation;

(8) 200.521 Management decision; and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 200.508 Auditee responsibilities.

The auditee must:

(a) Arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted in accordance with § 200.512.

(b) Prepare financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.

(c) Promptly follow up and take corrective action on audit findings. This includes preparing a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.

(d) Provide the auditor access to personnel, accounts, books, records, supporting documentation, and any other information needed for the auditor to perform the audit required by this part.

§ 200.509 Auditor selection.

(a) *Auditor procurement.* When procuring audit services, the auditee must follow the procurement standards in §§ 200.317 through 200.327 of subpart D or the FAR (48 CFR part 42), as applicable. When requesting proposals for audit services, the objectives and scope of the audit must be made clear, and the non-Federal entity must request a copy of the audit organization's peer review report, which the auditor must provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make efforts to contract with businesses as stated in § 200.321 or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceed $1 million. This restriction applies to the base year used to prepare the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they fully comply with the requirements of this part.

§ 200.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year chosen to meet this part's requirements. However, organization-wide financial statements of the non-Federal entity may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. The schedule must include the total Federal awards expended as determined in accordance with § 200.502. The auditee may choose to provide information requested by Federal agencies or pass-through-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may separately list the amount of Federal awards expended for each year of a Federal award. The schedule must:

(1) List individual Federal programs by Federal agency using the applicable Assistance Listing number(s). For a cluster of programs, the non-Federal entity must provide the cluster name, a list of individual Federal programs within the cluster, and provide the Federal agency name and the applicable Assistance Listing number(s). For research and development, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision within the Department of Health and Human Services.

(2) For audits covering multiple recipients (such as departments, agencies, IHEs, and other organizational

units), identify the recipient of the Federal award.

(3) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(4) Provide total Federal awards expended for each individual Federal program and the Assistance Listings number or other identifying number when the Assistance Listings information is unavailable. For a cluster of programs, the auditee must also provide the total for the cluster.

(5) Include the total amount provided to subrecipients from each Federal program.

(6) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This requirement is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(7) Include notes describing the significant accounting policies used in preparing the schedule and whether the auditee elected to use the 15 percent de minimis indirect cost rate (see § 200.414).

§ 200.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements, which must be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or only partially corrected, the summary schedule must describe the reasons for the finding's recurrence, planned corrective action, and any partial corrective action taken. When the corrective action taken significantly differs from the corrective action previously reported in a corrective action plan or the Federal agency's or pass-through-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare a corrective action plan to address each audit finding included in the auditor's report for the current year. The corrective action plan must be a document separate from the auditor's findings described in § 200.516. The corrective action plan must also provide the name(s) of the contact person(s) responsible for the corrective action, the corrective action to be taken, and the anticipated completion date. When the auditee does not agree with the audit findings or believes corrective action is not required, the corrective action plan must include a detailed explanation of the reasons.

§ 200.512 Report submission.

(a) *General.* (1) The audit must be completed and include the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section. The audit must be submitted within 30 calendar days after receiving the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) The auditee must make copies available for public inspection unless restricted by Federal statute or regulation. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* The FAC is the repository of record for subpart F reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit the required data collection form (SF–SAC) described in Appendix X of this part. This form provides information about the auditee, its Federal programs, the results of the audit, and whether the audit was completed in accordance with this part. The form must include all information required by this part that is necessary for Federal agencies to use the audit to ensure the integrity of Federal programs. The form includes data elements and a format that OMB must approve, is available from the FAC, and include collections of information from the reporting package described in paragraph (c).

(2) A senior-level representative of the auditee (for example, a State controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection form stating that the auditee complied with the requirements of this part, including that:

(i) The data collection form was prepared in accordance with this part (and the instructions accompanying the form);

(ii) The reporting package does not include protected personally identifiable information;

(iii) The information included in its entirety is accurate and complete; and

(iv) The FAC is authorized to make the reporting package and the form publicly available on a website.

(3) An auditee that is an Indian Tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a website. To opt-out, an Indian Tribe or tribal organization must exclude the authorization described in paragraph (b)(2)(iv) of this section. In these instances, the Indian Tribe is responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through

entities for which the summary schedule of prior audit findings reported the status of any findings related to those Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, the Indian Tribe must make copies of the reporting package available for public inspection.

(4) The auditor must complete the applicable data elements of the data collection form using the information included in the reporting package described in paragraph (c) of this section. The auditor must sign a statement to be included as part of the data collection form stating:

(i) The source of information included in the data collection form;

(ii) The auditor's responsibility for the information;

(iii) The data collection form is not a substitute for the reporting package described in paragraph (c); and

(iv) The content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the following:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 200.511(b);

(3) Auditor's report(s) discussed in § 200.515; and

(4) Corrective action plan discussed in § 200.511(c).

(d) *Submission to FAC.* The auditee must electronically submit the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section to the FAC.

(e) *Requests for management letters issued by the auditor.* Auditees must submit a copy of any management letters issued by the auditor when requested by a Federal agency or pass-through entity.

(f) *Report retention requirements.* Auditees must keep a copy of the data collection form described in paragraph (b) of this section and a copy of the reporting package described in paragraph (c) on file for three years from the date of submission to the FAC. Copies of audit records must be maintained in accordance with § 200.336.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507(c) to the public, except for Indian Tribes exercising the option in paragraph (b)(3) of this section, and maintain a database of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that the FAC knows have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such a manner as may be approved by OMB.

Federal Agencies

§ 200.513 Responsibilities.

(a) *Cognizant agency for audit responsibilities.* (1) A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The cognizant agency for audit must be the Federal agency that provides the largest amount of direct funding to a non-Federal entity (as listed on the Schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019 and every fifth year after that.

(3) Notwithstanding how audit cognizance is determined, a Federal agency may reassign cognizance to another Federal agency that provides substantial funding to an auditee if it agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must notify the change to the FAC, the auditee, and, if known, the auditor.

(4) The cognizant agency for audit must:

(i) Provide technical audit advice and assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors and provide the results to other interested organizations.

(iii) Cooperate and support the Federal agency designated by OMB to lead a government-wide analysis to assess the quality of single audits. The government-wide analysis may rely on the current and ongoing quality control review work performed by Federal agencies, State auditors, and professional audit associations. This government-wide audit analysis must be performed at an interval determined by OMB, and the results must be posted publicly. In providing support to the government-wide analysis, a Federal agency must provide the following:

(A) An assessment of the extent to which single audits conform to the requirements, standards, and procedures of this part; and

(B) Recommendations to address audit quality issues, including recommendations for any changes to this part's requirements, standards, and procedures.

(iv) Promptly inform the appropriate Federal law enforcement officials and impacted Federal agencies of any direct reporting by the auditee or its auditor required by GAGAS, Federal statute, or regulation.

(v) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate State licensing agencies and professional bodies.

(vi) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(vii) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon, rather than duplicate, audits performed in accordance with this part.

(viii) Coordinate a management decision for cross-cutting audit findings that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee. Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal

awards of more than one Federal agency or pass-through entity).

(ix) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(x) Provide advice to auditees as to how to handle changes in fiscal year.

(b) *Oversight agency for audit responsibilities.* An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit.* A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice and assistance to auditees and auditors.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Awarding Federal agency responsibilities.* In addition to all other requirements of this part, the awarding Federal agency must:

(1) Ensure that audits are completed, and reports are received in a timely manner in accordance with the requirements of this part.

(2) Provide technical advice and assistance to auditees and auditors.

(3) Follow-up on audit findings to ensure that non-Federal entities take appropriate and timely corrective action. Follow-up includes:

(i) Issuing a management decision in accordance with § 200.521;

(ii) Monitoring the non-Federal entity's progress implementing a corrective action;

(iii) Using a cooperative audit resolution approach to improve Federal program outcomes through better audit resolution, follow-up, and corrective action, which means the use of audit follow-up techniques promoting prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(A) A strong commitment by Federal agency and non-Federal entity leadership to Federal program integrity;

(B) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; non-Federal entities and their auditors working cooperatively with Federal agencies;

(C) A focus on current conditions and corrective action going forward;

(D) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(E) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

(iv) Tracking the effectiveness of the Federal agency's follow-up processes, the effectiveness of single audits in improving non-Federal entity accountability, and the use of single audits in making Federal award decisions. The Federal agency should develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings.

(4) Provide OMB with annual updates to the compliance supplement. These updates include working with OMB to ensure that the compliance supplement focuses the auditor on testing the compliance requirements most likely to cause improper payments, fraud, waste, abuse, or generate audit findings for which the Federal agency with take action in accordance with § 200.505. Federal agencies are encouraged to engage with external audit stakeholders and the Federal agency's Office of Inspector General's National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts to OMB.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal agency. The accountable official must be:

(i) Responsible for ensuring that the Federal agency fulfills the requirements of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Accountable for improving the effectiveness of the Federal agency's single audit processes in accordance with paragraph (c)(3)(iv).

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison. The liaison must:

(i) Serve as the Federal agency's point of contact for the single audit process within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and information sharing. This includes coordinating audit follow-up, identifying high-risk non-Federal entities, providing input on single audit and follow-up policy, enhancing the utility of the FAC, and identifying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal agency's program management personnel related to the single audit process.

(iv) Promote the Federal agency's use of a cooperative audit resolution approach as described in paragraph (c)(3)(iii) of this section.

(v) Coordinate the Federal agency's audit follow-up processes and ensure non-Federal entities implement corrective actions for audit findings.

(vi) Manage the Federal agency's audit follow-up processes for the cognizant agency for an audit if there are cross-cutting audit findings. Cross-cutting audit findings means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal agency or pass-through entity).

(vii) Ensure the Federal agency provides OMB with annual updates to the compliance supplement consistent with the compliance supplement preparation guide.

(viii) Support the mission of the Federal agency's single audit accountable official and coordinate with the Federal agency's Office of Inspector General's National Single Audit Coordinator (NSAC).

Auditors

§ 200.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must also cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during the audit period. In these instances, the audit must include the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the auditee's financial statements are presented fairly

in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control-Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements, and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included.

(4) The compliance testing must include tests of transactions and other auditing procedures necessary to provide the auditor with sufficient audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow up on prior audit findings regardless of whether a prior audit finding is related to a major program in the current year. Audit follow-up includes performing procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511. When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.

(f) *Data collection form.* As required in § 200.512(b)(4), the auditor must complete and sign specified sections of the data collection form.

§ 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) from the auditor determining whether the financial statement(s) of the auditee is presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by State law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of internal control and compliance testing and the results of the tests. Where applicable, the report must refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance and include an opinion (or disclaimer of opinion) as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on whether the audited financial statements were prepared in accordance with GAAP;

(ii) A statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements, if applicable;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) A statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit, if applicable;

(v) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on compliance for major programs;

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);

(vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the schedule of expenditures of Federal Awards is required for a cluster of programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a

recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under§ 200.520.

(2) Findings relating to the financial statements required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a) and be reported in the following manner:

(i) Audit findings (for example, internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements (paragraph (d)(2) of this section) and Federal awards (this paragraph (d)(3)) must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form and reference a detailed reporting in the other section.

(e) Nothing in this part precludes combining the reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and Appendix X of this part.

§ 200.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as an audit finding in the schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs when either known or likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. When reporting questioned costs, the auditor must include information to provide proper perspective for evaluating the prevalence and consequences of the questioned costs.

(4) Known questioned costs greater than $25,000 for a Federal program that is not audited as a major program. Except for audit follow-up, the auditor is not required to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (for example, as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion. This must be included unless the circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs.

(6) Known or likely fraud affecting a Federal award, unless the fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs. This paragraph does not require the auditor to publicly report information that could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented with sufficient detail and clarity for both the auditee to prepare a corrective action plan and take corrective action and for Federal agencies or pass-through-through entities to arrive at a management decision. As applicable, the following information must be included in audit findings:

(1) The Federal program and specific Federal award identification, including the Assistance Listings title and number, Federal award identification number and year, the name of the Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is unavailable, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement for the audit finding (for example, the specific Federal statute, regulation, or term and condition of the Federal award). The criteria or specific requirement provides a context for evaluating evidence and understanding findings. As a result, the criteria should generally identify the required or desired state or expectation with respect to the program or operation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency or pass-through entity to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) The identification of known questioned costs, by applicable Assistance Listing number(s) and Federal award identification number(s), and how these questioned costs were computed.

(7) When there are known questioned costs but the dollar amount is undetermined or not reported, a description of why the dollar amount was undetermined or otherwise could not be reported.

(8) Information to provide proper perspective for evaluating the prevalence and consequences of the audit finding. For example, whether the audit finding represents an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. In addition, the audit should indicate whether the sampling was a statistically valid sample.

(9) The identification of whether the audit finding is a repeat of a finding in the immediately prior audit. The audit must identify the applicable prior year

audit finding numbers in these instances.

(10) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(11) Views of the responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission (see § 200.512(b)).

§ 200.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee. The cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity may extend the retention period by providing written notification to the auditor. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to the destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation as is reasonable and necessary.

§ 200.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must consider current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process described in paragraphs (b) through (h) of this section must be followed.

(b) *Step one.* (1) The auditor must identify and label the larger Federal programs as Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table 1:

TABLE TO PARAGRAPH (b)(1)

Total Federal awards expended	Type A threshold
Equal to or exceed $1,000,000 but less than or equal to $25 million	$750,000.
Exceed $25 million but less than or equal to $100 million	Total Federal awards expended times .03.
Exceed $100 million but less than or equal to $1 billion	$3 million.
Exceed $1 billion but less than or equal to $10 billion	Total Federal awards expended times .003.
Exceed $10 billion but less than or equal to $20 billion	$30 million.
Exceed $20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) Including large loans and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. A Federal program providing loans is considered a large loan program when it exceeds four times the largest non-loan program. For these large loan programs, the auditor must consider the Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For this paragraph, a program is only considered a Federal program providing loans if the value of Federal awards expended for loans within the program comprises 50 percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program, and the value of Federal awards expended under a loan program is determined as described in § 200.502.

(4) For biennial audits (see § 200.504), the determination of Type A and Type B programs must be based on the Federal awards expended during the two-year audit period.

(c) *Step two.* (1) The auditor must identify Type A programs that are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and therefore preclude the program from being low-risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must not have had:

(i) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal agency request that a Type A program not be considered low-risk for a specific recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year for a particular recipient for the Federal agency to comply with 31 U.S.C. 3515. The Federal agency must notify the auditee and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.* (1) The auditor must identify high-risk Type B programs using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one-fourth of the number of low-risk Type A programs identified as low-risk under step two. Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1), (2), and (c)(1), a single criterion in risk would rarely cause a Type B program to be considered high-risk. When identifying which Type B programs to assess for risk, the auditor is encouraged to use an approach that provides an opportunity for different high-risk Type B programs to be audited as major programs over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that

exceed 25 percent (0.25) of the Type A threshold determined in step one.

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low-risk under step two.

(2) All Type B programs identified as high-risk under step three.

(3) Additional programs as necessary to comply with the percentage of coverage rule described in paragraph (f). This rule may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* When the auditee meets the criteria in § 200.520, the auditor only needs to audit the major programs identified in paragraphs (e)(1) and (2) of this section and such additional Federal programs with Federal awards expended that, in the aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in paragraphs (e)(1) and (2) of this section and such additional Federal programs with Federal awards expended that, in the aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis used for determining major programs.

(h) *Auditor's judgment.* The auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct when the determination was performed and documented in accordance with this part. Challenges by a Federal agency or pass-through entity must only be for clearly improper use of the requirements in this part. However, a Federal agency or pass-through entity may provide auditors guidance about the risk of a particular Federal program. The auditor must consider this guidance in determining major programs in audits not yet completed.

§ 200.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as those described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Therefore, consideration should be given to the control environment over Federal programs. This includes considering factors such as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards, and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (for example, one college campus) or pervasive throughout the entity.

(ii) A weak system for monitoring subrecipients would indicate higher risk when significant parts of a Federal program are passed to subrecipients through subawards.

(2) Prior audit findings would indicate higher risk, especially when the situations identified in the audit findings could significantly impact a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than those recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) The oversight exercised by Federal agencies or pass-through-through entities may be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) With the concurrence of OMB, a Federal agency may identify Federal programs that are higher risk. OMB will identify these Federal programs in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be higher risk. Federal programs primarily involving staff payroll costs may be at high risk for noncompliance with the requirements of § 200.430 but otherwise be at low risk.

(2) The phase of a Federal program in its lifecycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its lifecycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to the start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor issued unmodified opinions on both the schedule of expenditures of Federal awards and whether the financial statements were prepared in accordance with GAAP (or a basis of accounting required by State law).

(c) No internal control deficiencies were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or

(3) Known or likely questioned costs that exceeded five percent (.05) of the total Federal awards expended for a Type A program during the audit period.

Management Decisions

§ 200.521 Management decisions.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements, which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* The cognizant agency for audit is responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency (see § 200.513(a)(4)(vii)). The awarding Federal agency is responsible for issuing a management decision for audit findings that affect the Federal awards it makes to a non-Federal entity (see § 200.513(c)(3)(i)).

(c) *Pass-through entity.* The pass-through entity is responsible for issuing a management decision for audit findings that affect subawards it issues to subrecipients under a Federal award (see § 200.332(d)).

(d) *Time requirements.* The Federal agency or pass-through entity responsible for issuing a management decision must do so within six months of the FAC's acceptance of the audit report. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

■ 12. Revise appendix I to part 200 to read as follows:

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

(a) *General Requirements.*

(1) In developing a notice of funding opportunity (NOFO), Federal agencies must:

(i) Be concise and use plain language per the guidance at *PlainLanguage.gov* wherever possible.

(ii) For electronic NOFOs and other information about them, comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(2) Federal agencies may:

(i) Link to standard content to include required information rather than including the full language in the NOFO. The NOFO should make clear if linked information is critical—for example, standard terms and conditions, administrative and national policy requirements, and standard templates.

(ii) Include links to relevant regulations and other sources.

(iii) Use cross-references between the sections, including hyperlinks in electronic versions.

(3) *Required Consistency.* Potential applicants must be able to find similar information across all Federal NOFOs. To that end, Federal agencies must include the same or similar section headings and a table of contents with at least these sections:

(i) Basic Information
(ii) Eligibility
(iii) Program Description
(iv) Application Contents and Format
(v) Submission Requirements and Deadlines
(vi) Application Review Information
(vii) Award Notices
(viii) Post-Award Requirements and Administration

(b) *Required Sections and Information.*

As required below, the Federal agency must include the following sections and information in the text of a NOFO and a table of contents.

(1) *Basic Information.*

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal.

(i) This section must include the following:

(A) Federal Agency Name.

(B) Funding Opportunity Title.

(C) Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity).

(D) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement).

(E) Assistance Listing Number(s).

(F) Funding Details. The total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range.

(G) Key Dates. Key dates include due dates for submitting applications or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO is evaluated on a ''rolling'' basis, the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision.

(H) Executive Summary. A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible recipients. The text of the executive summary should not exceed 500 words.

(I) Agency contact information.

(ii) This section could include the following:

(A) The amount of funding per Federal award, on average, experienced in previous years.

(B) Whether this is a new program or a one-time initiative.

(2) *Eligibility.*

This section addresses the factors that determine applicant or application eligibility.

(i) *Eligible Applicants.* This subsection must identify the following:

(A) A complete and specific list of entity types eligible to apply.

(B) Any additional restrictions on eligibility beyond the type of entity.

(C) Eligibility factors for the principal investigator or project director, if any.

(D) Criteria that would make any particular projects ineligible.

(E) A reference to any funding restriction elsewhere in the NOFO that could affect an applicant's or project's eligibility.

(F) A reference or link to any other factors that would disqualify an applicant or application, such as the responsiveness criteria in 6a.

(G) Any limit on the number of applications an applicant may submit under the announcement. Make clear whether the limitation is on the submitting organization, individual investigator or program director, or both.

(ii) *Cost Sharing.* This subsection must state:

(A) Whether there is required cost sharing. This statement must be clear that not committing to the required cost sharing will make the application ineligible. If cost sharing is not required, the announcement must say so.

(B) An explanation of the calculation for the required cost sharing. Required cost sharing may be a certain percentage or amount or in the form of contributions of specified items or activities (*for example,* provision of equipment).

(C) Any restrictions on the types of cost, such as in-kind contributions, acceptable as cost sharing.

(D) Any requirement to commit to cost sharing. This section should refer to the appropriate portions of section D stating any pre-award requirements for the submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

(3) *Program Description.*

This section contains the full program description of the funding opportunity.

(i) This section must include the following:

(A) The general purpose of the funding and what it is expected to achieve for the public good.

(B) The Federal agency's funding priorities or focus areas, if any.

(C) Program goals and objectives.

(D) A description of how the award will contribute to achieving the program's goals and objectives.

(E) The expected performance goals, indicators, targets, baseline data, data collection, and other outcomes the Federal agency expects recipients to achieve.

(F) For cooperative agreements, the ''substantial involvement'' that the Federal agency expects to have or should reference where the potential applicant can find that information.

(G) Information on program specific unallowable costs so that the applicant can develop an application and budget consistent with program requirements and any limits on indirect costs.

(H) Any eligibility criteria for beneficiaries or program participants other than Federal award recipients.

(I) Citations for authorizing statutes and regulations for the funding opportunity.

(ii) This section could also include the following:

(A) Any program history, such as whether it is a new program or a new or changed area of program emphasis.

(B) Examples of successful projects funded in the past.

(C) Other information the Federal agency finds necessary.

(4) *Application Contents and Format.*

This subsection must identify the required content of an application and the forms or formats an applicant must use. If any requirements are stated elsewhere, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

(i) This subsection must specifically address content and form or format requirements for:

(A) Pre-applications, letters of intent, or white papers are required or encouraged if they apply.

(B) The application as a whole.

(C) Component pieces of the application.

(D) Information that successful applicants must submit after notification of intent to make a Federal award but prior to a Federal award. For example, this could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

(ii) Within each of the categories above, this subsection must include, where relevant:

(A) Limitations on page numbers.

(B) Formatting requirements, including font and font size, margins, paper size, and color limitations.

(C) Any requirements for file naming, file size limitations, or file format such as PDF.

(D) The number of copies required if paper submissions are allowed.

(E) The sequence required for application sections or components.

(F) Signature requirements, including those for electronic submissions.

(G) Any requirements for third-party information such as references, letters of support, or letters of commitment to the project or to contribute to cost sharing.

(H) A reference to any requirements in Section 6 to provide documentation to support an eligibility determination, such as proof of 501(c)(3) status or an authorizing tribal resolution.

(I) Instructions needed to develop the narrative portions of the application. Include any requirements for its order, format, or required headings.

(J) If applicable, the need to identify proprietary information. Include how to do so and how the Federal agency will handle it.

(5) *Submission Requirements and Deadlines.*

(i) *Address to Request Application Package.* This subsection must include the following:

(A) How to get application forms, kits, or other materials needed to apply. If the announcement contains everything needed, this section needs only say so. If not, the guidance must include:

(1) An internet address where the materials can be accessed.

(2) An email address.

(3) A U.S. Postal Service mailing address.

(4) Telephone number.

(5) Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, or other appropriate telecommunication relay service.

(ii) *Unique entity identifier and System for Award Management (SAM.gov).* This subsection must state the requirements for unique entity identifiers and registration in *SAM.gov*. It must include the following:

(A) Each applicant must:

(1) Be registered in *SAM.gov* before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active registration in *SAM.gov* with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal agency.

(B) If individuals are eligible to apply, they are exempt from this requirement under 2 CFR 25.110(b).

(C) If the Federal agency exempts any applicants from this requirement under 2 CFR 25.110(c) or (d), a statement to that effect.

(iii) *Submission Instructions.* This subsection addresses how the applicant will submit the application. It must include the following:

(A) Actions needed prior to applying:

(1) Instructions on any registrations required to access electronic submission systems or links to them. Where possible, provide the expected time frames needed to complete the registration process.

(B) The methods for submitting the application:

(1) Whether the applicant must submit in electronic or paper form or whether the applicant has an option. Applicants should not be required to submit in more than one format.

(2) Instructions on how to submit electronically or links to them. Must include the URL to the electronic submission system and information on or links to information about the system or software requirements needed by the system.

(3) If the Federal agency allows paper submissions, the process used to approve this option if it is not automatically allowed.

(4) If the Federal agency allows paper submissions, the method for submitting the application. This information must include a postal address and ''care of'' information needed to route the application to the appropriate person, office, or email address, if the Federal agency allows such submissions.

(C) If applicable, this subsection also must say how applicants must submit pre-applications, letters of intent, third-party information, or other information required before the award. It must include the following:

(1) Instructions on how to submit electronically or links to them.

(2) Whether the applicant must submit in electronic or paper form or whether the applicant has an option.

(3) If the Federal agency allows paper submissions, the method for submitting the required information. This information must include a postal address and ''care of'' information needed to route the application to the appropriate person, office, or email address.

(D) This subsection must also include what to do in the event of system problems and a point of contact who will be available if the applicant experiences technical difficulties.

(iv) *Submission Dates and Times.* This subsection must include due dates and times for all submissions. If they are different for electronic and paper submissions, be clear about the differences. This includes the following:

(A) Full applications.

(B) Any preliminary submissions, such as letters of intent, white papers, or pre-applications.

(C) Any other submissions required before Federal award separate from the full application.

(D) If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so.

(v) *Intergovernmental Review.* This section must include the following:

(A) Whether or not the funding opportunity is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

(B) If it is applicable, include the following:

(1) A short description of this requirement.

(2) Where applicants can find their State's Single Point of Contact, learn whether their State has an intergovernmental review process, and if so, get information on their State's process. The list of SPOCs is on the Office of Management and Budget's website.

(6) *Application Review Information.*

(i) *Responsiveness Review.* This section includes information on the criteria that make an application or project ineligible. These are sometimes referred to as

''responsiveness'' criteria, ''go-no-go'' criteria, or ''threshold'' criteria. Federal agencies may change the title of this section as appropriate. This section must include the following:

(A) A brief understanding of the Federal agency responsiveness review process.

(B) A list and enough detail to understand the criteria or disqualifying factors to be reviewed.

(C) A reference to the regulation or requirement that describes the restriction, if applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, say so.

(ii) *Review Criteria.* This section must address the review criteria that the Federal agency will use to evaluate applications for merit. This information includes the merit and other review criteria evaluators will use to judge applications, including any statutory, regulatory, or other preferences that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed.

The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize the fairness of the process.

(A) This section must include the following:

(1) A clear description of each criterion and sub-criterion used.

(2) If criteria vary in importance, the relative percentages, weights, or other means used to distinguish between them.

(3) For statutory, regulatory, or other preferences, an explanation of those preferences with an explicit indication of their effect, for example, if they result in additional points being assigned.

(4) How an applicant's proposed cost sharing will be considered in the review process if it is not an eligibility criterion in Section 2b. For example, to assign a certain number of additional points to applicants who offer cost sharing or to break ties among applications with equivalent scores after evaluation against all other factors. If cost sharing will not be considered in the evaluation, the announcement should say so. Do not include statements that cost sharing is encouraged without providing clarity about what that means.

(5) The relevant information if the Federal agency permits applicants to nominate reviewers of their applications or suggest those, they feel may be inappropriate due to a conflict of interest.

(B) This section could include the following:

(1) The types of people responsible for evaluation against the merit criteria. For example, peers external to the Federal agency or Federal agency personnel.

(2) The number of people on an evaluation panel and how it operates, how reviewers are selected, reviewer qualifications, and how conflicts of interest are avoided.

(iii) *Review and Selection Process.*

This section may vary in the level of detail provided.

(A) It must include the following:

(1) Any program policy, factors, or elements that the selecting official may use in selecting applications for the award. For example, geographical dispersion, program balance, or diversity.

(2) A brief description of the merit review process, including how the Federal agency uses merit review outcomes in final decision-making. For example, whether they are advisory only.

(B) It could also include the following:

(1) Who makes the final selections for awards.

(2) Any multi-phase review methods. For example, an external panel that advises on, makes, or approves final recommendations to the deciding official.

(iv) *Risk Review.*

(A) This section must include the following:

(1) A brief description of the factors used for the Federal agency's risk review as required by § 200.206.

(2) If the Federal agency expects that any award under the NOFO will be more than the simplified acquisition threshold during its period of performance, include the following information:

(i) That before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the Federal agency must review and consider any information about the applicant that is in the responsibility/qualification records available in *SAM.gov* (see 41 U.S.C. 2313).

(ii) That an applicant can review and comment on any information in the responsibility/qualification records available in *SAM.gov*.

(iii) That before making decisions in the risk review required by § 200.206 the Federal agency will consider any comments by the applicant, along with information available in the responsibility/qualification records in *SAM.gov*.

(7) *Award Notices.*

This section must address what a successful applicant can expect to receive following selection.

(i) It must include the following:

(A) If the Federal agency's practice is to provide a separate notice stating that an application has been selected before it makes the Federal award, indicate that the letter is not an authorization to begin performance and that the Federal award is the authorizing document.

(B) If pre-award costs are allowed, beginning performance is at the applicant's own risk.

(C) This section should indicate that the notice of Federal award signed by the grants officer, or equivalent, is the official document that obligates funds, and whether it is provided through postal mail or by electronic means and to whom.

(D) The timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.

(8) *Post-Award Requirements and Administration.*

(i) *Administrative and National Policy Requirements.* Providing information on administrative and policy requirements lets a potential applicant identify any requirements with which it would have difficulty complying. This section must include the following:

(A) A statement related to the ''general'' terms and conditions of the award, including requirements that the Federal agency normally includes.

(B) Any relevant special terms and conditions.

(C) Any special requirements that could apply to specific awards after the review of applications and other information based on the particular circumstances of the effort to be supported. For example, if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing, or security requirements.

(D) As in other sections, the announcement need not include all terms and conditions of the award but may refer to documents with details on terms and conditions.

(ii) *Reporting.*

This section includes information needed to understand the post-award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ from what the Federal agency's Federal awards usually require. For example, differences in report type, frequency, form, format, or circumstances for use. This section must include the following:

(A) The type of reporting required, such as financial or performance.

(B) The reporting frequency.

(C) The means of submission, such as paper or electronic.

(D) References to all relevant requirements, such as those at 2 CFR 180.335 and 180.350.

(E) If the Federal share of any Federal award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post-award reporting requirements reflected in appendix XII to this part.

(9) *Other Information—Optional.*

This section may include any additional information to help potential applicants. For example, the section could include the following:

(i) Related programs or other upcoming or ongoing Federal agency funding opportunities for similar activities.

(ii) Current internet addresses for Federal agency websites that may be useful to an applicant in understanding the program.

(iii) Routine notices to applicants. For example, the Federal Government is not obligated to make any Federal award as a result of the announcement, or only grants officers can bind the Federal Government to the expenditure of funds.

■ 13. Amend appendix III to part 200 by revising the heading of section A.1. and paragraph C.2 to read as follows:

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

* * * * *

A. General

* * * * *

1. Major Functions/Activities of an IHE
* * * * *

C. Determination and Application of Indirect (F&A) Cost Rate or Rates
* * * * *

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

■ 14. Amend appendix IV to part 200 by revising paragraphs B.2.c. and B.4.a.iii to read as follows:

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

* * * * *

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates
* * * * *

2. * * *

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for $50,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.

* * * * *

4. * * *

a. * * *

(iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, information technology and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

■ 15. Amend appendix VII to part 200 by

■ a. Revising paragraphs C.2.c.(1), C.3.e.(1), and D.1.b.;

■ b. Redesignating paragraphs D.1.c. and D.1.d. as D.1.d. and D.1.e; and

■ c. Adding a new paragraph D.1.c.

The revisions and addition read as follows:

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates
* * * * *

2. * * *

c. * * *

(1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of $50,000, and participant support costs),
* * * * *

3. * * *

e. * * *

(1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of $50,000, and participant support costs),
* * * * *

D. Submission and Documentation of Proposals
* * * * *

1. * * *

b. A governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) that receives more than $35 million in direct Federal funding during its fiscal year must submit its indirect cost rate proposal to its cognizant agency for indirect costs.

c. If a governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) receives $35 million or less in direct Federal funding during its fiscal year, it must develop an indirect cost proposal in accordance with the requirements of this part and maintain the proposal and related supporting documentation for audit. This established rate must be accepted by any Federal agency to which the governmental department or agency applies for funding. Federal agencies must not compel the governmental department or agency to accept the de minimis rate or some other rate established by the Federal agency. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

* * * * *

■ 16. Revise appendix X to part 200 to read as follows:

Appendix X to Part 200—Data Collection Form (Form SF–SAC)

The Data Collection Form SF–SAC is available as a webform on the Federal Audit Clearinghouse (FAC). Form and submission instructions can be found at *https://www.fac.gov/*.

■ 25. Revise appendix XII to part 200 to read as follows:

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

I. Reporting of Matters Related to Recipient Integrity and Performance

(a) *General Reporting Requirement.*

(1) If the total value of your active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient must ensure the information available in the responsibility/qualification records through the System for Award Management (*SAM.gov*), about civil, criminal, or administrative proceedings described in paragraph (b) of this award term is current and complete. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in responsibility/qualification records in *SAM.gov* on or after April 15, 2011 (except past performance reviews required for Federal procurement contracts) will be publicly available.

(b) *Proceedings About Which You Must Report.*

(1) You must submit the required information about each proceeding that—

(i) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

(ii) Reached its final disposition during the most recent five-year period; and

(iii) Is one of the following—

(A) A criminal proceeding that resulted in a conviction;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(C) An administrative proceeding that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(D) Any other criminal, civil, or administrative proceeding if—

(*1*) It could have led to an outcome described in paragraph (b)(1)(iii)(A) through (C);

(*2*) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(*3*) The requirement in this award term to disclose information about the proceeding does not conflict with applicable laws and regulations.

(c) *Reporting Procedures.*

Enter the required information in *SAM.gov* for each proceeding described in paragraph (b) of this award term. You do not need to submit the information a second time under grants and cooperative agreements that you received if you already provided the information in *SAM.gov* because you were required to do so under Federal procurement contracts that you were awarded.

(d) *Reporting Frequency.*

During any period of time when you are subject to the requirement in paragraph (a) of this award term, you must report proceedings information in *SAM.gov* for the most recent five-year period, either to report new information about a proceeding that you have not reported previously or affirm that there is no new information to report. If you have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000, you must disclose semiannually any information about the criminal, civil, and administrative proceedings.

(e) *Definitions.*

For purposes of this award term—

Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (for example, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with the performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Total value of currently active grants, cooperative agreements, and procurement contracts includes the value of the Federal share already received plus any anticipated Federal share under those awards (such as continuation funding).

II. [Reserved]

Deidre A. Harrison,

Deputy Controller, performing the delegated duties of the Controller Office of Federal Financial Management.

[FR Doc. 2023–21078 Filed 9–28–23; 4:15 pm]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final and Interim Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–06; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2023–06. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

RULES LISTED IN FAC 2023–06

Item	Subject	FAR case	Analyst
I	Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders.	2020–011	Ryba.
II	Whistleblower Protection for Contractor Employees	2017–005	Jones.
III	8(a) Program	2021–012	Bowman.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023–06 amends the FAR as follows:

Item I—Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders (FAR Case 2020–011)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement supply chain risk information sharing and exclusion or removal orders required by the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council (FASC).

The FAR is being amended to implement applicable exclusion or removal orders recommended by the FASC when they are issued by the Secretary of Homeland Security, the Secretary of Defense, or the Director of National Intelligence. Offerors will be required to check both the System for Award Management and individual solicitations for applicable exclusion orders.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

Item II—Whistleblower Protection for Contractor Employees (FAR Case 2017–005)

This final rule amends the FAR to implement Public Law 114–261 (41 U.S.C. 4712). The rule enhances whistleblower protection for contractor employees by making permanent the protection for disclosure of certain information. It also clarifies that the FAR 31.205–47 prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to subcontractors, as well as contractors.

DoD, NASA and the Coast Guard have a different whistleblower program for contractor employees.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item III—8(a) Program Changes (FAR Case 2021–012)

This final rule amends the FAR to update and clarify requirements associated with the Small Business Administration's (SBA) 8(a) program. Specifically, this rule clarifies that the certificate of competency program is not applicable to 8(a) sole-source awards and requires that BPAs issued under part 13, including orders placed under part 13 BPAs under the 8(a) Program, must be offered to, and accepted by SBA. Additionally, this rule clarifies an 8(a) participant's eligibility for award for a two-step design procurement and clarifies that a concern must be a current participant in the 8(a) program at the time of an 8(a) sole-source award. This rule also implements policy that allows the SBA to appeal a contracting officer's decision that an acquisition previously procured under the 8(a) program is a new requirement not subject to the release requirements set forth in 13 CFR. Furthermore, this rule requires the contracting officer to notify the SBA when the contracting officer decides that a requirement, previously procured under the 8(a) program, is a new requirement and not a follow-on requirement to an 8(a) contract; and when the procuring activity intends to procure a follow-on requirement using an existing limited contracting vehicle that is not available to all 8(a) participants and the current or previous 8(a) contract was available to all 8(a) participants. Lastly, this rule encourages the contracting officer to notify the SBA Associate Administrator for Business Development at least 30 days prior to the end of the contract or order when a mandatory source will be used for a follow-on requirement to an 8(a) contract.

Item IV—Technical Amendments

An administrative change is made at FAR 52.212–3.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2023–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2023–06 is effective October 5, 2023 except for Item I, which is effective December 4, 2023, and Items II, III, and IV, which are effective November 6, 2023.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 9, 13, 39, and 52

[FAC 2023–06; FAR Case 2020–011; Item I; Docket No. FAR–2020–0011, Sequence No. 1]

RIN 9000–AO13

Federal Acquisition Regulation: Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement supply chain risk information sharing and exclusion or removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council.

DATES:

Effective date: December 4, 2023.

Applicability: The FAR changes apply to solicitations issued on or after December 4, 2023 in accordance with FAR 1.108(d).

For existing indefinite delivery contracts only, contracting officers shall modify them, in accordance with FAR 1.108(d), to include the FAR clause at 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition (including any applicable alternate) within 6 months of December 4, 2023, to apply to future orders. However, for Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts, if the FASCSA orders are going to be applied at the order level, then FAR clause 52.204–28 should be included instead, within 6 months of December 4, 2023.

If exercising an option or modifying an existing contract or task or delivery order to extend the period of performance, contracting officers shall include the FAR clause at 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition (including any applicable alternate). When exercising an option, agencies should consider modifying the existing contract to add the clause in a sufficient amount of time to both provide notice for exercising the option and to provide contractors with adequate time to comply with the clause.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before December 4, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAC 2023–06, FAR Case 2020–011 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2020–011''. Select the link ''Comment Now'' that corresponds with FAR Case 2020–011. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2020–011'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2020–011'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Marissa Ryba, Procurement Analyst, at 314–586–1280 or by email at *Marissa.Ryba@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–06, FAR Case 2020–011.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement section 202 of the Federal Acquisition Supply Chain Security Act of 2018 (Title II of the SECURE Technology Act, Pub. L. 115–390, Dec. 21, 2018), and a final rule issued by the Federal Acquisition Security Council (FASC) (August 26, 2021, 86 FR 47581, effective September 27, 2021).

Foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications technology to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States and its citizens. Vulnerabilities may be introduced during any phase of the product or service life cycle, including: design, development and production, distribution, acquisition and deployment, maintenance, and disposal. These vulnerabilities can include the incorporation of malicious software, hardware, and counterfeit components; flawed product designs; and poor manufacturing processes and maintenance procedures.

The U.S. Government's efforts to evaluate threats to and vulnerabilities in supply chains have historically been undertaken by individual or small groups of agencies to address specific supply chain security risks. Because of the scale of supply chain risks faced by Government agencies, and the need for better coordination among a broader group of agencies, there was an organized effort within the Executive

branch to support Congressional efforts in 2018 to pass new legislation to improve Executive branch coordination, supply chain information sharing, and actions to address supply chain risks.

Title II of the SECURE Technology Act, also referred to as the Federal Acquisition Supply Chain Security Act of 2018, established the Federal Acquisition Security Council (FASC) and authorized it to perform a variety of functions, including making recommendations for orders that would require the removal of covered articles from executive agency information systems or the exclusion of sources or covered articles from executive agency procurement actions. The FASC is an Executive branch interagency council, which is chaired by a senior-level official from the Office of Management and Budget (OMB). The FASC includes representatives from GSA; Department of Homeland Security (DHS); Office of the Director of National Intelligence; DoD; Department of Justice (DOJ); and Department of Commerce (Commerce).

The FASC issued a final rule adding 41 CFR part 201–1, which implements the Federal Acquisition Supply Chain Security Act of 2018 requirements. The FASC final rule establishes procedures that govern the operation of the FASC, the sharing of supply chain risk information, the exercise of its authorities to recommend issuance of orders requiring removal of covered articles from information systems (removal orders), and orders excluding sources or covered articles from future procurements (exclusion orders) that pose a risk to our nation's supply chain. This rule refers to both exclusion and removal orders as ''FASCSA orders''.

Under the FASC final rule, the FASC will evaluate sources and/or covered articles by addressing a common set of non-exclusive factors that are listed in the FASC final rule. Initiation of the process can begin either by referral of the FASC or any member of the FASC; upon the written request of any U.S. Government body; or based on information submitted to the FASC by any individual or non-Federal entity that the FASC determines to be credible.

The FASC will conduct appropriate due diligence regarding the information that it is considering. If the FASC does not find that recommending a removal or exclusion order is warranted, risk information received and analyzed by the FASC may be shared, as appropriate, in accordance with the FASC final rule. If the FASC decides to issue a recommendation, that recommendation will provide relevant information and analysis for the Secretary of Homeland Security, the Secretary of Defense, and/or the Director of National Intelligence (DNI), as appropriate, to consider when deciding whether to issue a FASCSA order.

Executive agencies must share relevant supply chain risk information. DHS, acting primarily through the Cybersecurity and Infrastructure Security Agency (CISA), is the information sharing agency (ISA), which will share and disseminate information within the FASC, and other Federal and non-Federal entities, as appropriate.

Collectively, the information sharing requirements and implementation of FASCSA orders will address risks in supply chains by reducing or removing threats and vulnerabilities that may lead to data and intellectual property theft, damage to critical infrastructure, harm to Federal information systems, and otherwise degrade our national security. This rule will also help make Government supply chains and information systems more resilient and less subject to disruptions that could impact Government operations.

II. Discussion and Analysis

A. Overview of Rule

This interim rule implements within the FAR the requirements of the Federal Acquisition Supply Chain Security Act of 2018 and the Federal Acquisition Security Council (FASC) final rule for complying with exclusion or removal orders and sharing certain supply chain risk information. Once an order recommended by the FASC is issued by the Secretary of Homeland Security, the Secretary of Defense, and/or the Director of National Intelligence, affected Executive agencies are required to implement the order.

As referred to in this rule, the term FASCSA order may refer to either an exclusion order or removal order. An exclusion order is applicable during the process for awarding a new contract or task or delivery order, as it excludes from the offered supplies or services any products or services subject to a FASCSA order. A removal order requires removal of any products or services from an executive agency information system subject to a FASCSA order. In some instances, a contracting officer may incorporate a contract term to require compliance with a FASCSA order issued after award via a modification that incorporates FAR clause 52.204–28, Federal Acquisition Supply Chain Security Act Orders-Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts, or FAR clause 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition.

As a result of this interim rule, contracting officers will now have established procedures to implement FASCSA orders in existing and new Federal contracts and to share relevant information on potential supply chain risk. These procedures reduce exploitations of vulnerabilities, in turn making the supply chain more resilient.

Contractors and offerors will also play a key role in this process by remaining current on FASCSA orders identified in the solicitation and contract. When an offeror submits a new offer in response to a contract solicitation containing the new requirement, the offeror will represent, after conducting a reasonable inquiry, that the offeror does not propose to provide or use any prohibited covered articles or products or services subject to a FASCSA order. These measures are necessary to build resilience in Government supply chains. Further procedures allow an offeror to disclose where they cannot comply with a FASCSA order. The purpose for this disclosure is so that the Government may decide whether to pursue a waiver.

Throughout contract performance, contractors will be required to report to the contracting officer once they become aware that a covered article or product or service subject to a FASCSA order has been delivered to the Government or used in performance of the contract. This reporting requirement applies not just to FASCSA orders incorporated into the contract, but also to new FASCSA orders issued after contract award or added to the contract through modification. Reporting this information to the contracting officer will provide the Government the needed information to assess the risk and make a determination on how to proceed.

B. Part 1 Updates

The OMB control number for the new information collection required by this interim rule is being added to FAR 1.106.

C. Part 4 Updates

A new FAR subpart 4.23 titled Federal Acquisition Security Council is being added to implement requirements for FASCSA orders and supply chain risk information sharing.

FAR 4.2301 provides definitions in accordance with the FASC final rule.

FAR 4.2302 requires the contracting officer to work with the cognizant program office or requiring activity in accordance with agency procedures to share relevant supply chain risk information with the FASC if there is a reasonable basis to conclude there exists

a substantial supply chain risk associated with a source or covered article.

FAR 4.2303 identifies the requirements for Executive agencies to implement FASCSA orders when they are issued by the Secretary of Homeland Security, the Secretary of Defense, or the Director of National Intelligence. FASCSA orders for sources or covered articles will be searchable within the System for Award Management (SAM) to make it easier for contractors and Government to identify the products and services subject to a FASCSA order; however, in rare cases additional FASCSA orders, not identified in SAM, will be identified in the solicitation.

If a covered article or the source is subject to a Governmentwide FASCSA order, this section directs Executive agencies responsible for management of the Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts to remove the covered articles or sources identified in the FASCSA order from such contracts.

FAR 4.2304 provides the procedures for a contracting officer to follow when completing the clause at FAR 52.204–30 identifying applicable FASCSA orders and when a solicitation or contract may be updated to incorporate additional FASCSA orders. In the rare case when a FASCSA order is identified outside of SAM, Executive agencies must follow agency procedures.

Additional specific procedures are outlined for Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts or any other procurement instrument intended for use by multiple agencies. An agency awarding this type of vehicle may decide to apply FASCSA orders in the basic contract or the task order or delivery order.

This section further provides the contracting officer with procedures to determine whether to pursue a waiver, how to identify a full or partial waiver in the solicitation, and who to work with when a contractor submits a report identifying covered articles or sources subject to a FASCSA order.

FAR 4.2305 identifies the procedures for an agency to submit a waiver request that includes all necessary information for the official who issued the FASCSA order (issuing official) to review and evaluate the request, including alternative mitigations to the risks addressed by the order and the ability of an agency to fulfill its mission critical functions. Agencies may reasonably choose not to pursue a waiver and to make award to an offeror that does not require a waiver in accordance with the procedures at 4.2304.

FAR 4.2306 prescribes new provision at FAR 52.204–29, Federal Acquisition Supply Chain Security Act Orders-Representation and Disclosures, and two new clauses, FAR 52.204–28, Federal Acquisition Supply Chain Security Act Orders-Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts, and FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition.

The terms ''covered article'' and ''covered entity'' in FAR 4.2001 and the clause at FAR 52.204–23 are updated to ''Kaspersky Lab covered article'' and ''Kaspersky Lab covered entity'' to avoid confusion with the definition of a covered article excluded or removed under the authority of an issuing official. The definition of ''Kaspersky Lab covered entity'' was updated to reference the recently adopted name Kaspersky.

D. Part 9 Updates

Clarification is added at FAR 9.400 that FASCSA orders are covered at FAR subpart 4.23. FAR subpart 9.4 covers debarment and suspension, and exclusions.

E. Part 13 Updates

FAR 13.201 is updated to include the prohibition on covered articles and sources subject to a FASCSA order for micro-purchases.

F. Part 39 Updates

The prohibition is being added to FAR 39.101 to ensure members of the acquisition workforce working on information technology procurements are aware of the prohibition.

G. Part 52 Updates

In addition to the name changes discussed in Part 4, the clause at FAR 52.204–23 is updated to change the reporting time frame for the initial report from 1 business day to 3 business days to align with the reporting time frame at FAR 52.204–30(c)(4) and provide sufficient time for contractors to submit a report.

The new provision at FAR 52.204–29, Federal Acquisition Supply Chain Security Act Orders-Representation and Disclosures, is added prohibiting contractors from providing any covered article, or any products or services produced or provided by a source, including contractor use of covered articles or sources, if the covered article or the source is subject to an applicable FASCSA order identified in the clause at FAR 52.204–30(b)(1). Contractors must search for FASCSA orders in SAM. To locate the FASCSA orders in SAM, contractors can search by entity information using the search term ''FASCSA order'' to locate all FASCSA orders or only those that apply to the solicitation. Details about the FASCSA orders will be in the additional comments field. FASCSA orders issued after the date of solicitation are not effective unless the solicitation is amended. In rare cases, a FASCSA order may be identified in the solicitation, and not in SAM.

By submitting an offer, an offeror is representing that it has conducted a reasonable inquiry and is not providing any covered article, or any products or services subject to an applicable FASCSA order identified in the solicitation at FAR 52.204–30(b)(1). If an offeror cannot represent compliance with the prohibition, then the offeror must disclose this and provide the required information in accordance with 52.204–29(e). The Government will use this information to determine whether to seek a waiver or may choose to make an award to an offeror that does not require a waiver.

The new clause at FAR 52.204–28, Federal Acquisition Supply Chain Security Act Orders-Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts, provides contractors with notice that FASCSA orders will be identified in the request for quote or in the notice of intent to place an order. Contractors will be able to identify applicable FASCSA orders in paragraph (b)(1) of FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition with its Alternate II. Contractors will also be required to remove from the basic contract any covered article or any product or service produced or provided by a source subject to a FASCSA order issued collectively by DHS, DoD, and DNI.

The new clause at FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition, prohibits contractors from providing any covered article, or any products or services produced or provided by a source, if the covered article or the source is subject to an applicable FASCSA order identified in paragraph (b). In most cases, for solicitations and contracts awarded by DoD, DoD FASCSA orders will apply; and for all other solicitations and contracts, DHS FASCSA orders will apply. The clause, when used with its Alternate I, identifies a different construct for paragraph (b) allowing the contracting officer to select the applicable FASCSA orders (*i.e.* DoD FASCSA order, DHS

FASCSA order, DNI FASCSA order). The clause at FAR 52.204–30 also requires the contractor to review SAM at least once every three months or as advised by the contracting officer, and provide a report in the event the contractor identifies that a covered article, or product or service produced or provided by a source, that is subject to a FASCSA order, was provided to the Government or used during contract performance; or the contractor is notified of such by a subcontractor at any tier or by any other means. The clause, when used with its Alternate II is for Federal Supply Schedules, Governmentwide acquisition contracts and multi-agency contracts when FASCSA orders are applied at the order level.

FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services, FAR 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Products and Commercial Services), and FAR 52.244–6, Subcontracts for Commercial Products and Commercial Services are updated to add the requirements of FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition.

III. Specific Questions For Comment

DoD, GSA, and NASA welcome input on the following questions regarding anticipated impact on affected parties.

- What additional information or guidance do you view as necessary to effectively comply with this interim rule?
- What challenges do you anticipate facing in effectively complying with this interim rule?

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

This interim rule adds a new contract clause at FAR 52.204–28, Federal Acquisition Supply Chain Security Act Orders-Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts. The clause is prescribed at FAR 4.2306(a) and is required in the basic solicitation and resultant contract for all Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts when FASCSA orders are contemplated to be applied at the task or delivery order level. The clause will apply to acquisitions valued at or below the SAT; acquisitions of commercial products, including COTS items; and acquisition of commercial services.

This interim rule adds a new provision at FAR 52.204–29, Federal Acquisition Supply Chain Security Act Orders-Representation and Disclosures. The provision is prescribed at FAR 4.2306(b) and is for use in all solicitations for contracts, except that for Federal Supply Schedules, Governmentwide acquisition contracts and multi-agency contracts the clause will be inserted in all solicitations for contracts if FASCSA orders apply at the contract level. The provision will apply to acquisitions valued at or below the SAT; acquisitions of commercial products, including COTS items; and acquisition of commercial services.

This interim rule adds a new contract clause at FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition, including the clause with its Alternate I and Alternate II. The clause is prescribed at FAR 4.2306(c) for use in all solicitations and contracts, except that for Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts where FASCSA orders are applied at the contract level, the clause must be used with its Alternate I in all solicitations and resultant contracts; or, if FASCSA orders are applied at the order level, the clause shall be used with its Alternate II in all requests for quotations, or in all notices of intent to place an order. The clause will apply to acquisitions valued at or below the SAT; acquisitions of commercial products, including COTS items; and acquisition of commercial services. The above provision and clauses are necessary to implement FASCSA orders authorized by the Federal Acquisition Supply Chain Security Act of 2018 and the Federal Acquisition Supply Chain Security Act final rule.

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

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial products and commercial services contracts the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council has made a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items.

C. Determinations

While the law does not specifically address acquisitions at or below the SAT, or acquisitions of commercial products or commercial services, including COTS items, there is an unacceptable level of risk for the Government in buying products or services subject to a FASCSA order. This level of risk is not alleviated by the fact that the product or service being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.,* that it is a commercial product or commercial service or COTS item), nor by the small size of the purchase (*i.e.,* at or below the SAT). As a result, agencies may face increased exposure for violating the law and unknowingly acquiring products or services subject to a FASCSA order absent coverage of these types of acquisitions by this interim rule.

V. Expected Impact of the Rule

Foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications technology to commit malicious cyber-enabled attacks, including economic and industrial espionage against the United States and its citizens. Vulnerabilities may be introduced during any phase of the product or service life cycle: design, development and production, distribution, acquisition and deployment, maintenance, and disposal. These vulnerabilities can include the incorporation of malicious software, hardware, and counterfeit components; flawed product designs; and poor manufacturing processes and maintenance procedures.

This rule helps mitigate these supply chain risks by ensuring agencies and contractors are implementing supply chain risk information sharing and FASCSA orders for covered articles as required by the FASC final rule.

Information sharing by Federal agencies with the FASC will ensure that substantial supply chain risks are communicated with impacted parties across the Government so agencies can promptly address the risks. Implementation of FASCSA orders will ensure Federal agencies are not sourcing products or services determined to have a significant supply chain risk (*i.e.* subject to a FASCSA order).

DoD, GSA, and NASA have performed a regulatory impact analysis (RIA) on this interim rule. The total estimated public costs associated with this FAR rule in millions of dollars calculated over a ten-year period (calculated at a 3-percent and 7-percent discount rate) are as follows:

Estimated costs	3% Discount rate (million)	7% Discount rate (million)
Present Value	$745	$903
Annualized	106	105

The following is a summary from the RIA of the specific compliance requirements and the estimated costs of compliance. The RIA includes a detailed discussion and explanation about the assumptions and methodology used to estimate the cost of this regulatory action, including the specific impact and costs for small businesses. It is available at *https://www.regulations.gov* (search for ''FAR Case 2020–011'' click ''Open Docket,'' and view ''Supporting Documents'').

The following is a summary of specific compliance requirements that are considered new for Federal offerors, contractors, and subcontractors (hereinafter collectively referred to as ''contractors''), as applicable:

- Regulatory familiarization
- Review the System for Award Management (SAM) for FASCSA orders
- Submission of disclosure information
- Review SAM for covered articles/sources subject to a FASCSA order
- Review of supply chain for covered articles/source subject to FASCSA orders
- Submit reporting information identifying covered articles/sources subject to FASCSA orders

Note, at this time no issuing official has issued any FASCSA orders; therefore, the assumptions made below are based on other similar cases where a contractor must review their supply chain and provide alternative sources.

Regulatory Familiarization

It is expected that all contractors will be required to become familiar with these new compliance requirements in the FAR and will be required to update policies and procedures to ensure compliance with FASCSA orders and train their contracts, program, and supply chain personnel on the requirements. While this is a new requirement, restrictions on particular sources or articles are not new to the FAR. This should reduce the impact on contractors from having to establish entirely new processes and procedures, but rather update current ones to add covered articles subject to new FASCSA orders, or any products or services produced or provided by an excluded source. Regulatory familiarization is only expected to have a regulatory impact during the first year of implementation.

Review the System for Award Management (SAM) for FASCSA Orders

In accordance with 52.204–29, offerors must search SAM for any covered articles, or any products or services produced or provided by a source subject to a FASCSA order, as identified in the solicitation.

All offerors will need to review SAM for any applicable FASCSA orders using the search term ''FASCSA order''. Offerors and contractors are familiar with SAM and searching for other exclusions such as telecommunications equipment and services established under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115–232. The frequency of which an offeror will search SAM will likely be based on the number of contracts and orders that they manage. Some offerors may choose to regularly review SAM for new FASCSA orders on a corporate level and notify applicable personnel when a new order is issued, while others may choose to review SAM with each proposal, likely at least once when the solicitation comes out and once prior to submitting the proposal to ensure compliance with the representation before submission. The frequency with which offerors review SAM will also be based on the number and frequency that FASCSA orders are issued; however at this time no FASCSA orders have been issued.

Submission of Disclosure Information

Once the offeror reviews SAM, they must identify if they cannot represent compliance and intend to propose any covered article or any products or services produced or provided by a source subject to a FASCSA order, in response to the solicitation. If the offeror identifies such items, they must disclose the following information to the Government:

(1) Name of the product or service provided to the Government;

(2) Name of the covered article or source subject to a FASCSA order;

(3) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Offeror;

(4) Brand;

(5) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(6) Item description;

(7) Reason why the applicable covered article or the product or service is being provided or used.

Depending on the issuing agency, FASCSA orders will only affect some companies and some contracts.

Reviewing SAM for Excluded Articles/ Sources

In accordance with FAR 52.204–30, contractors must review SAM, at least once every three months or as advised by the contracting officer, for any covered articles, or any products or services produced or provided by a source subject to a FASCSA order issued after the date of solicitation. The need to review SAM can also be completed when contractors review SAM as part of their normal business dealings including this rule, which requires review during the solicitation phase. Therefore, the cost impact is already accounted for in this rule; however, the cost impact of submitting a report once a new FASCSA order is identified is accounted for separately below.

Review of Supply Chain for Covered Articles/Source for FASCSA Orders

In accordance with FAR 52.204–30, when a contractor identifies that a covered article or product or service produced or provided by a source is subject to a new FASCSA order, contractors will have to evaluate their supply chain to determine whether it was provided to the Government or used during contract performance.

Submit Reporting Information Identifying Excluded Articles/Sources

In accordance with paragraph (c) of FAR 52.204–30, when a contractor identifies that a covered article or product or service produced or provided by a source is subject to a new FASCSA order and was provided to the Government or used during contract performance, then the contractor must notify the Government within 3 business days and provide the following information:

- Contract number
- Order number(s), if applicable
- Name of the product or service provided to the Government or used during contract performance
- Name of the covered article or source subject to a FASCSA order
- If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Contractor
- Brand
- Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number)
- Item description
- Any readily available information about mitigation actions undertaken or recommended.

Within 10 business days of submitting the previous information, the contractor must provide information on mitigation actions taken and actions taken to prevent future submissions of or use of covered articles or sources.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a significant regulatory action and, therefore was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VII. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808), DoD, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A rule that qualifies under the definition in 5 U.S.C. 804(2) cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule qualifies under the definition in 5 U.S.C. 804(2).

VIII. Regulatory Flexibility Act

DoD, GSA, and NASA expect that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement supply chain risk information sharing requirements and exclusion or removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council (FASC).

The objective of this interim rule is to implement supply chain risk information sharing and FASCSA orders.

The legal basis for the rule is the Federal Acquisition Supply Chain Security Act of 2018 (title II of the SECURE Technology Act, Pub. L. 115–390, Dec. 21, 2018), and the final rule issued by the Federal Acquisition Security Council (August 26, 2021, 86 FR 47581, effective September 27, 2021). Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

The interim rule will impact all small entities that are prime contractors and all small entities that are subcontractors. Data from the Federal Procurement Data System (FPDS) for fiscal years (FYs) 2019 through 2021 was used. On average per year the Government awards contracts and orders for supplies and services to 94,035 unique contractors, of which approximately 65 percent or 61,797 are small businesses.

This interim rule will require small entities to: (1) become familiar with the new regulatory requirements; (2) review the System for Award Management (SAM) for FASCSA orders; (3) submit disclosure information; (4) review SAM for excluded articles or sources; (5) review their supply chain for covered articles or sources prohibited by a FASCSA order; and (6) submit a report identifying if a prohibited article or source was delivered to the government in the performance of the contract.

To comply with the new regulatory requirements, it is expected that all small entities, or 61,797 will need to become familiar with FASCSA orders. Additionally, this regulatory familiarization may also include updating policies and procedures to ensure compliance. However, exclusions are not new to the FAR making the impact less.

Once a small entity intends to respond to a solicitation, they will need to review the solicitation to identify which FASCSA orders apply to the current solicitation and subsequent contract, and search SAM for more information on applicable FASCSA orders. It is estimated that all small entities, 61,797, will review SAM for FASCSA orders when responding to a solicitation.

It is estimated that a small number of small entities, 10 percent or 3,090, will not be able to represent compliance with the prohibition and therefore must disclose to the Government that they intend to propose a covered article or source prohibited by an applicable FASCSA order. Failure to comply with the prohibition poses risk for the contractor in not being awarded a contract if a waiver from the requirement is not obtained.

Small entities will be required to review SAM for any covered articles or any products or services produced or provided by a source, including contractor use of covered articles or sources, subject to a FASCSA order during the performance of the contract. This is not expected to create any additional impact because small entities are already searching SAM as part of this rule when responding to a solicitation.

When a new FASCSA order is issued, small entities may have to review their supply chain to determine whether a covered article or any products or services produced or provided by a source subject to a FASCSA order were used or provided to the Government during the performance of the contract. This is estimated to impact approximately half of small entities, 30,899

because not all FASCSA orders will apply to every contract or contractor.

It is estimated that a very small subset of small entities, 3 percent or 927, may identify a covered article or any products or services produced or provided by a source subject to a FASCSA order that were delivered during the performance of the contract, and be required to submit a report to the Government.

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

It was contemplated during the development of this rule to create a representation requirement in SAM for contractors to complete annually and then update on a solicitation-by-solicitation basis, if necessary. The current process reduces the impact by replacing the SAM representation with a representation by submission of the offer. There are no other available alternatives to the proposed rule to accomplish the desired objective of the statute.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020–011), in correspondence.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521) applies. The rule contains information collection requirements. The PRA provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained OMB approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA are requesting emergency processing of the collection of information involved in this rule, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the PRA, because agencies subject to the FAR would not have a mechanism to implement any FASCSA orders issued by the FASC.

b. The collection of information is essential to the mission of the agencies to protect the Government supply chain from vulnerabilities posed by acquiring products or services that violate a FASCSA order issued under the authority of the Federal Acquisition Supply Chain Security Act of 2018 and the final rule issued by the FASC.

c. Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Authorizing collection of this information will ensure that agencies have a mechanism to implement FASCSA orders and address vulnerabilities in supply chains that can enable data and intellectual property theft, loss of confidence in integrity, or exploitation that causes system and network failure.

DoD, GSA, and NASA will publish a separate 30-day notice in the **Federal Register** requesting public comment on the proposed emergency information collections contained within this rule under OMB Control Number 9000–0205, Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders.

Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 6,113.

Total Annual Responses: 6,113.

Total Burden Hours: 12,226.

X. Determination To Issue an Interim Rule

Pursuant to 41 U.S.C. 1707(d), a determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the FAR is revised promptly to reflect the current requirements of the law, which prohibits the Federal Government from acquiring products or services that violate the prohibition of an exclusion or removal order issued pursuant to the Federal Acquisition Supply Chain Security Act (FASCSA) of 2018 and the final rule issued by the FASC.

The Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence may issue a FASCSA order at any time. For this reason, this FAR rule must take effect without awaiting the delay associated with solicitation, review, and response to public comments to ensure agencies and contractors are able to promptly implement supply chain risk information sharing and FASCSA orders. If a FASCSA order is issued agencies are required to implement that order. In the absence of issuing this FAR rule immediately, agencies will be forced to issue individual agency policies and procedures including drafting contract provisions for inclusion in all agency contracts. Due to the complexity of this novel requirement, it has taken several years to draft and develop the framework of this FAR rule and involved many Government agencies in the process. Each agency would now be required to start this process over and develop their own agency policies and procedures, further delaying the implementation of FASCSA orders and likely resulting in inconsistent contract terms and implementation across multiple agencies and gaps in compliance.

Failure to implement FASCSA orders uniformly across the Government would adversely impact national security making it critical to implement this FAR rule without delay. Vulnerabilities in supply chains for covered articles can enable data and intellectual property theft, loss of confidence in integrity, or exploitation to cause system and network failure. The cost to our nation comes not only in lost innovation, jobs, and economic advantage, but also in reduced military strength. Delaying implementation of this interim rule would increase national security risks to the Government posed by covered articles subject to a FASCSA order. Therefore, a Governmentwide FAR rule is the best tool available now to provide a consistent and reliable implementation across agencies.

Consistent with the Congressional Review Act (CRA) (5 U.S.C. 801–808), this rule will not take effect until 60 days after it is published in the **Federal Register**, allowing Congress time to review this interim rule. This short delay in the effective date is beneficial to both contracting agencies and industry to provide the necessary time to assess and prepare to implement the new requirements. Both contracting agencies and industry will need to develop and implement new policies and procedures, notify and train their workforce on the new requirements, and update contract writing systems to

incorporate the new provisions and clause. This 60-day delay associated with the CRA is significantly shorter than the delay associated with issuing a proposed rule, and thus avoids the risks associated with extended delay highlighted above.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), the Department of Defense, General Services Administration, and National Aeronautics and Space Administration will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 4, 9, 13, 39, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 9, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 9, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106, amend the table by adding in numerical order entries for 4.23, 52.204–29, and 52.204–30 to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
4.23	9000–0205
* * * * *	
52.204–29	9000–0205
52.204–30	9000–0205
* * * * *	

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. Revise section 4.2001 to read as follows:

4.2001 Definitions.

As used in this subpart—

Kaspersky Lab covered article means any hardware, software, or service that—

(1) Is developed or provided by a Kaspersky Lab covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

Kaspersky Lab covered entity means—

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab, including any change in name, *e.g.,* ''Kaspersky'';

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

4.2002 [Amended]

■ 4. Amend section 4.2002 by removing from paragraphs (a) and (b) the word ''covered'' and adding ''Kaspersky Lab covered'' in its place.

4.2004 [Amended]

■ 5. Amend section 4.2004 by removing ''Kaspersky Lab and Other Covered'' and adding ''Kaspersky Lab Covered'' in its place.

■ 6. Add subpart 4.23 to read as follows:

Subpart 4.23—Federal Acquisition Security Council

Sec.
4.2300 Scope of subpart.
2301 Definitions.
4.2302 Sharing supply chain risk information.
4.2303 FASCSA orders.
4.2304 Procedures.
4.2305 Waivers.
4.2306 Solicitation provision and contract clauses.

Subpart 4.23—Federal Acquisition Security Council

4.2300 Scope of subpart.

This subpart implements the Federal Acquisition Supply Chain Security Act of 2018 (title II of Pub. L. 115–390) and the Federal Acquisition Security Council (FASC) regulation at 41 CFR part 201–1. The authority provided in this subpart expires on December 31, 2033 (see 41 U.S.C. 1328).

4.2301 Definitions.

As used in this subpart—

Covered article, as defined in 41 U.S.C. 4713(k), means—

(1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see 32 CFR part 2002); or

(4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

FASCSA order means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in 41 CFR 201–1.303(d) and (e):

(1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.

(2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.

(3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may be referred to as a DNI FASCSA order.

Federal Acquisition Security Council (FASC) means the Council established pursuant to 41 U.S.C. 1322(a).

Intelligence community, as defined by 50 U.S.C. 3003(4), means the following—

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the

Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

(9) The Bureau of Intelligence and Research of the Department of State;

(10) The Office of Intelligence and Analysis of the Department of the Treasury;

(11) The Office of Intelligence and Analysis of the Department of Homeland Security; or

(12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

National security system, as defined in 44 U.S.C. 3552, means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of any covered articles, or any products or services produced or provided by a source. This applies when the covered article or the source is subject to an applicable FASCSA order. A reasonable inquiry excludes the need to include an internal or third-party audit.

Sensitive compartmented information means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

Sensitive compartmented information system means a national security system authorized to process or store sensitive compartmented information.

Source means a non-Federal supplier, or potential supplier, of products or services, at any tier.

Supply chain risk, as defined in 41 U.S.C. 4713(k), means the risk that any person may sabotage, maliciously introduce unwanted functionality, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.

Supply chain risk information includes, but is not limited to, information that describes or identifies:

(1) Functionality and features of covered articles, including access to data and information system privileges;

(2) The user environment where a covered article is used or installed;

(3) The ability of a source to produce and deliver covered articles as expected;

(4) Foreign control of, or influence over, a source or covered article (*e.g.,* foreign ownership, personal and professional ties between a source and any foreign entity, legal regime of any foreign country in which a source is headquartered or conducts operations);

(5) Implications to government mission(s) or assets, national security, homeland security, or critical functions associated with use of a covered source or covered article;

(6) Vulnerability of Federal systems, programs, or facilities;

(7) Market alternatives to the covered source;

(8) Potential impact or harm caused by the possible loss, damage, or compromise of a product, material, or service to an organization's operations or mission; and

(9) Likelihood of a potential impact or harm, or the exploitability of a system;

(10) Security, authenticity, and integrity of covered articles and their supply and compilation chain;

(11) Capacity to mitigate risks identified;

(12) Factors that may reflect upon the reliability of other supply chain risk information; and

(13) Any other considerations that would factor into an analysis of the security, integrity, resilience, quality, trustworthiness, or authenticity of covered articles or sources.

4.2302 Sharing supply chain risk information.

(a) Executive agencies are required to share relevant supply chain risk information with the FASC if the executive agency has determined there is a reasonable basis to conclude a substantial supply chain risk associated with a source or covered article exists (see 41 CFR 201–1.201).

(b) In support of information sharing described in paragraph (a) of this section, the contracting officer shall work with the program office or requiring activity in accordance with agency procedures regarding the sharing of relevant information on actual or potential supply chain risk determined to exist during the procurement process.

4.2303 FASCSA orders.

(a) Executive agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any covered article, or any products or services produced or provided by a source, including contractor use of covered articles or sources, if that prohibition is established by an applicable FASCSA order issued by the Director of National Intelligence, Secretary of Defense, or Secretary of Homeland Security (the ''issuing official'')(see 41 CFR 201–1.304(a)).

(b) If a covered article or the source is subject to an applicable Governmentwide FASCSA order issued collectively by the Director of National Intelligence, Secretary of Defense, and Secretary of Homeland Security, executive agencies responsible for management of the Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts shall facilitate implementation of a collective FASCSA order by removing the covered articles or sources identified in the FASCSA order from such contracts (see 41 CFR 201–1.303(g)).

(c)(1) FASCSA orders regarding sources or covered articles will be found in the System for Award Management (SAM), by searching for the phrase ''FASCSA order''. SAM may be updated as new FASCSA orders are issued.

(2) Some FASCSA orders will not be identified in SAM and will need to be identified in the solicitation to be effective for that acquisition. The requiring activity or program office will identify these FASCSA orders to the contracting officer (see 4.2304(d)).

(3) The contracting officer shall work with the program office or requiring activity to identify which FASCSA orders apply to the acquisition.

4.2304 Procedures.

(a) *Identifying applicable FASCSA orders.* The applicability of FASCSA orders to a particular acquisition depends on the contracting office's agency, the scope of the FASCSA order,

the funding, and whether the requirement involves certain types of information systems (see the definition of FASCSA order at 4.2301). The contracting officer shall coordinate with the program office or requiring activity to identify the FASCSA order(s) that apply to the acquisition as follows:

(1) Unless the program office or requiring activity instructs the contracting officer otherwise, FASCSA orders apply as follows: contracts awarded by civilian agencies will be subject to DHS FASCSA orders, and contracts awarded by the Department of Defense will be subject to DoD FASCSA orders. See paragraph (b) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition.

(2) For acquisitions where the program office or the requiring activity instructs the contracting officer to select specific FASCSA orders, the contracting officer must select ''yes'' or ''no'' for each applicable type of FASCSA order (*i.e.,* ''DHS FASCSA Order'' ''DoD FASCSA Order'' or ''DNI FASCSA Order''). See paragraph (b)(1) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, with its Alternate I.

(b) *Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts specific procedures*—(1) *Applying FASCSA orders.* An agency awarding this type of contract may choose to apply FASCSA orders in accordance with agency policy as follows:

(i) *Application at the contract level.* The agency awarding the basic contract may choose to apply FASCSA orders to the basic contract award. This is the preferred method, especially if small value orders or orders without a request for quotation (RFQ) are expected. Ordering activity contracting officers may use this contract vehicle without taking further steps to identify applicable FASCSA orders in the order. The contracting officer awarding the basic contract would select ''yes'' for all FASCSA orders (*i.e.,* ''DHS FASCSA Order'' ''DoD FASCSA Order'' and ''DNI FASCSA Order'') (see paragraph (b)(1) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, with its Alternate I). If the contracting officer becomes aware of a newly issued applicable FASCSA order, then the agency awarding the basic contract shall modify the basic contract to remove any covered article, or any products or services produced or provided by a source, prohibited by the newly issued FASCSA order.

(ii) *Application at the order level.* The agency awarding the basic contract may choose to apply FASCSA orders at the order level, as implemented by the ordering activity contracting officer.

(2) *Collective FASCSA orders.* If a new FASCSA order is issued collectively by the Secretary of Homeland Security, Secretary of Defense, and Director of National Intelligence, then the contracting officer shall modify the basic contract based upon the requirements of the order, removing any covered article, or any products or services produced or provided by a source (see 4.2303(b)).

(3) *Interagency acquisitions.* For an interagency acquisition (see subpart 17.5) where the funding agency differs from the awarding agency, the funding agency shall determine the applicable FASCSA orders.

(4) *Inconsistencies.* If any inconsistency is identified between the basic contract and the order, then the FASCSA orders identified in the order will take precedence.

(c) *Updating the solicitation or contract for new FASCSA orders.* The contracting officer shall update a solicitation or contract if the program office or requiring activity determines it is necessary to:

(1) Amend the solicitation to incorporate FASCSA orders in effect after the date the solicitation was issued but prior to contract award; or

(2) Modify the contract to incorporate FASCSA orders issued after the date of contract award.

(i) Any such modification should take place within a reasonable amount of time, but no later than 6 months from the determination of the program office or requiring activity.

(ii) If the contract is not modified within the time specified in paragraph (c)(2)(i) of this section, then the contract file shall be documented providing rationale why the contract could not be modified within this timeframe.

(d) *Agency specific procedures.* The contracting officer shall follow agency procedures for implementing FASCSA orders not identified in SAM (see 4.2303(c)(2)).

(e) *Disclosures.* If an offeror provides a disclosure pursuant to paragraph (e) of 52.204–29, Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures, the contracting officer shall engage with the program office or requiring activity to determine whether to pursue a waiver, if available, in accordance with 4.2305 and agency procedures or not award to that offeror. For FASCSA orders handled at the order level, the disclosures language is found at paragraph (b)(5) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, with its Alternate II.

(f) *Waiver.* An acquisition may be either fully or partially covered by a waiver. Partial waiver coverage occurs when only portions of the products or services being procured or provided by a source are covered by an applicable waiver. If the requiring activity notifies the contracting officer that the acquisition is partially covered by an approved individual waiver or class waiver under 4.2305, then the contracting officer shall work with the program office or requiring activity to identify in the solicitation, RFQ, or order, the covered articles or services produced by or provided by a source that are subject to the waiver (see 41 CFR 201–1.304(b)).

(g) *Reporting.* If a contractor provides a report pursuant to paragraph (c) of 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, the contracting officer shall engage with the agency supply chain risk management program in accordance with agency procedures.

4.2305 Waivers.

(a) An executive agency required to comply with a FASCSA order may submit a request that the order or some of its provisions not apply to—

(1) The agency;

(2) Specific actions of the agency or a specific class of acquisitions;

(3) Actions of the agency for a period of time before compliance with the order is practicable; or

(4) Other activities, as appropriate, that the requesting agency identifies.

(b) A request for waiver shall be submitted by the executive agency in writing to the official that issued the order, unless other instructions for submission are provided by the applicable FASCSA order.

(c) The request for waiver shall provide the following information for the issuing official to review and evaluate the request, including—

(1) Identification of the applicable FASCSA order;

(2) A description of the exception sought, including, if limited to only a portion of the order, a description of the order provisions from which an exception is sought;

(3) The name or a description sufficient to identify the covered article or the product or service provided by a source that is subject to the order from which an exception is sought;

(4) Compelling justification for why an exception should be granted, such as the impact of the order on the agency's ability to fulfill its mission-critical functions, or considerations related to

the national interest, including national security reviews, national security investigations, or national security agreements;

(5) Any alternative mitigations to be undertaken to reduce the risks addressed by the FASCSA order; and

(6) Any other information requested by the issuing official.

(d) The contracting officer, in accordance with agency procedures and working with the program office or requiring activity, shall decide whether to pursue a waiver or to make award to an offeror that does not require a waiver in accordance with the procedures at 4.2304(f). If a waiver is being pursued, then the contracting officer may not make an award until written approval is obtained that the waiver has been granted.

4.2306 Solicitation provision and contract clauses.

(a) In all Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts where FASCSA orders are applied at the order level, the contracting officer shall insert the clause at 52.204–28, Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts, in the basic contract solicitation and resultant contract (see 4.2304(b)(1)(ii)).

(b) The contracting officer shall insert the provision at 52.204–29, Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures—

(1) In all solicitations, except for Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts.

(2) In all solicitations for Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts, if FASCSA orders are applied at the contract level (see 4.2304(b)(1)(i)).

(c) The contracting officer shall insert the clause at 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition—

(1) In solicitations and contracts if the conditions specified at 4.2304(a)(1) apply, except for Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts. For acquisitions where conditions specified at 4.2304(a)(2) apply, then the contracting officer shall use the clause with its Alternate I.

(2) In Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts—

(i) Where FASCSA orders are applied at the contract level, with its Alternate I in all solicitations and resultant contracts. See 4.2304(b)(1)(i).

(ii) Where FASCSA orders are applied at the order level, with its Alternate II in all RFQs, or in all notices of intent to place an order. See 4.2304(b)(1)(ii).

PART 9—CONTRACTOR QUALIFICATIONS

■ 7. Amend section 9.400 by adding paragraph (c) to read as follows:

9.400 Scope of subpart.

* * * * *

(c) For Federal Acquisition Supply Chain Security Act (FASCSA) orders, see subpart 4.23.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 8. Amend section 13.201 by adding paragraph (l) to read as follows:

13.201 General.

* * * * *

(l) Do not procure or obtain, or extend or renew a contract to procure or obtain, any covered article, or any products or services produced or provided by a source, including contractor use of covered articles or sources, if prohibited from doing so by an applicable Federal Acquisition Supply Chain Security Act (FASCSA) order issued by the Director of National Intelligence, Secretary of Defense, or Secretary of Homeland Security (see 4.2303).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 9. Amend section 39.101 by adding paragraph (h) to read as follows:

39.101 Policy.

* * * * *

(h) Executive agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any covered article, or any products or services produced or provided by a source, including contractor use of covered articles or sources, if prohibited from doing so by an applicable FASCSA order issued by the Director of National Intelligence, Secretary of Defense, or Secretary of Homeland Security (see 4.2303).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.204–23 by—

■ a. Revising the section heading, clause heading, and the date of the clause;

■ b. In paragraph (a):

■ i. Removing the definition ''Covered article'' and adding the definition of ''Kaspersky Lab covered article'' in its place; and

■ ii. Removing the definition ''Covered entity'' and adding the definition ''Kaspersky Lab covered entity'' in its place;

■ c. In paragraph (b) removing ''covered article'' wherever it appears and adding ''Kaspersky Lab covered article'' in its place, respectively;

■ d. Removing from the first sentence in paragraph (c)(1) ''identifies a covered article'' and adding ''identifies a Kaspersky Lab covered article'' in its place;

■ e. Removing from paragraph (c)(2)(i) ''1 business day'' and adding ''3 business days'' in its place; and

■ f. Removing from paragraph (c)(2)(ii) ''covered article'' wherever it appears and adding ''Kaspersky Lab covered article'' in its place and removing from the end of the paragraph ''covered articles'' and adding ''Kaspersky Lab covered articles'' in its place.

The revisions and additions read as follows:

52.204–23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities.

* * * * *

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (DEC 2023)

(a) * * *

Kaspersky Lab covered article means any hardware, software, or service that—

(1) Is developed or provided by a Kaspersky Lab covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

Kaspersky Lab covered entity means—

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab, including any change in name, *e.g.,* ''Kaspersky'';

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

* * * * *

■ 11. Add sections 52.204–28, 52.204–29, and 52.204–30 to read as follows:

Sec.

* * * * *

52.204–28 Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts.

52.204–29 Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures.

* * * * *

52.204–28 Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts.

As prescribed in 4.2306(a), insert the following clause:

Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts (DEC 2023)

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

Covered article, as defined in 41 U.S.C. 4713(k), means—

(1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see 32 CFR part 2002); or

(4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

FASCSA order means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in 41 CFR 201–1.303(d) and (e):

(1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.

(2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.

(3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may be referred to as a DNI FASCSA order.

Intelligence community, as defined by 50 U.S.C. 3003(4), means the following—

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

(9) The Bureau of Intelligence and Research of the Department of State;

(10) The Office of Intelligence and Analysis of the Department of the Treasury;

(11) The Office of Intelligence and Analysis of the Department of Homeland Security; or

(12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

National security system, as defined in 44 U.S.C. 3552, means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

Sensitive compartmented information means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

Sensitive compartmented information system means a national security system authorized to process or store sensitive compartmented information.

Source means a non-Federal supplier, or potential supplier, of products or services, at any tier.

(b) *Notice.* During contract performance, the Contractor shall be required to comply with any of the following that apply: DHS FASCSA orders, DoD FASCSA orders, or DNI FASCSA orders. The applicable FASCSA order(s) will be identified in the request for quotation (see 8.405–2), or in the notice of intent to place an order (see 16.505(b)). FASCSA orders will be identified in paragraph (b)(1) of FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition, with its Alternate II.

(c) *Removal.* Upon notification from the contracting officer, during the performance of the contract, the Contractor shall promptly make any necessary changes or modifications to remove any covered article or any product or service produced or provided by a source that is subject to an applicable Governmentwide FASCSA order (see FAR 4.2303(b)).

(End of clause)

52.204–29 Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures.

As prescribed in 4.2306(b), insert the following provision:

Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures (DEC 2023)

(a) *Definitions.* As used in this provision, *Covered article, FASCSA order, Intelligence community, National security system, Reasonable inquiry, Sensitive compartmented information, Sensitive compartmented information system,* and *Source* have the meaning provided in the clause 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.

(b) *Prohibition.* Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the prohibition is set out in an applicable Federal Acquisition Supply Chain Security Act (FASCSA) order, as described in paragraph (b)(1) of FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.

(c) *Procedures.* (1) The Offeror shall search for the phrase ''FASCSA order'' in the System for Award Management (SAM)(*https://www.sam.gov)* for any covered article, or any products or services produced or provided by a source, if there is an applicable FASCSA order described in paragraph (b)(1) of FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.

(2) The Offeror shall review the solicitation for any FASCSA orders that are not in SAM, but are effective and do apply to the solicitation and resultant contract (see FAR 4.2303(c)(2)).

(3) FASCSA orders issued after the date of solicitation do not apply unless added by an amendment to the solicitation.

(d) *Representation.* By submission of this offer, the offeror represents that it has conducted a reasonable inquiry, and that the offeror does not propose to provide or use in response to this solicitation any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA order in effect on the date the solicitation was issued, except as waived by the solicitation, or as disclosed in paragraph (e).

(e) *Disclosures.* The purpose for this disclosure is so the Government may decide whether to issue a waiver. For any covered article, or any products or services produced or provided by a source, if the covered article or the source is subject to an applicable FASCSA order, and the Offeror is unable to represent compliance, then the Offeror shall provide the following information as part of the offer:

(1) Name of the product or service provided to the Government;

(2) Name of the covered article or source subject to a FASCSA order;

(3) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Offeror;

(4) Brand;

(5) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(6) Item description;

(7) Reason why the applicable covered article or the product or service is being provided or used;

(f) *Executive agency review of disclosures.* The contracting officer will review disclosures provided in paragraph (e) to determine if any waiver may be sought. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise subject to a FASCSA order and may instead make an award to an offeror that does not require a waiver.

(End of provision)

52.204–30 Federal Acquisition Supply Chain Security Act Orders—Prohibition.

As prescribed in 4.2306(c), insert the following clause:

Federal Acquisition Supply Chain Security Act Orders—Prohibition (DEC 2023)

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

Covered article, as defined in 41 U.S.C. 4713(k), means—

(1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see 32 CFR part 2002); or

(4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

FASCSA order means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in 41 CFR 201–1.303(d) and (e):

(1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.

(2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.

(3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may be referred to as a DNI FASCSA order.

Intelligence community, as defined by 50 U.S.C. 3003(4), means the following—

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

(9) The Bureau of Intelligence and Research of the Department of State;

(10) The Office of Intelligence and Analysis of the Department of the Treasury;

(11) The Office of Intelligence and Analysis of the Department of Homeland Security; or

(12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

National security system, as defined in 44 U.S.C. 3552, means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of any covered articles, or any products or services produced or provided by a source. This applies when the covered article or the source is subject to an applicable FASCSA order. A reasonable inquiry excludes the need to include an internal or third-party audit.

Sensitive compartmented information means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

Sensitive compartmented information system means a national security system authorized to process or store sensitive compartmented information.

Source means a non-Federal supplier, or potential supplier, of products or services, at any tier.

(b) *Prohibition.* (1) Unless an applicable waiver has been issued by the issuing official, Contractors shall not provide or use as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA orders as follows:

(i) For solicitations and contracts awarded by a Department of Defense contracting office, DoD FASCSA orders apply.

(ii) For all other solicitations and contracts DHS FASCSA orders apply.

(2) The Contractor shall search for the phrase ''FASCSA order'' in the System for Award Management (SAM) at *https://www.sam.gov* to locate applicable FASCSA orders identified in paragraph (b)(1).

(3) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the solicitation and resultant contract.

(4) A FASCSA order issued after the date of solicitation applies to this contract only if added by an amendment to the solicitation or modification to the contract (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5)(i) If the contractor wishes to ask for a waiver of the requirements of a new FASCSA order being applied through modification, then the Contractor shall disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or source subject to a FASCSA order;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied or supplies the covered article or the product or service to the Offeror;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) *Executive agency review of disclosures.* The contracting officer will review disclosures provided in paragraph (b)(5)(i) to determine if any waiver is warranted. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise covered by a FASCSA order and to instead pursue other appropriate action.

(c) *Notice and reporting requirement.* (1) During contract performance, the Contractor

shall review *SAM.gov* at least once every three months, or as advised by the Contracting Officer, to check for covered articles subject to FASCSA order(s), or for products or services produced by a source subject to FASCSA order(s) not currently identified under paragraph (b) of this clause.

(2) If the Contractor identifies a new FASCSA order(s) that could impact their supply chain, then the Contractor shall conduct a reasonable inquiry to identify whether a covered article or product or service produced or provided by a source subject to the FASCSA order(s) was provided to the Government or used during contract performance.

(3)(i) The Contractor shall submit a report to the contracting office as identified in paragraph (c)(3)(ii) of this clause, if the Contractor identifies, including through any notification by a subcontractor at any tier, that a covered article or product or service produced or provided by a source was provided to the Government or used during contract performance and is subject to a FASCSA order(s) identified in paragraph (b) of this clause, or a new FASCSA order identified in paragraph (c)(2) of this clause. For indefinite delivery contracts, the Contractor shall report to both the contracting office for the indefinite delivery contract and the contracting office for any affected order.

(ii) If a report is required to be submitted to a contracting office under (c)(3)(i) of this clause, the Contractor shall submit the report as follows:

(A) If a Department of Defense contracting office, the Contractor shall report to the website at *https://dibnet.dod.mil.*

(B) For all other contracting offices, the Contractor shall report to the Contracting Officer.

(4) The Contractor shall report the following information for each covered article or each product or service produced or provided by a source, where the covered article or source is subject to a FASCSA order, pursuant to paragraph (c)(3)(i) of this clause:

(i) Within 3 business days from the date of such identification or notification:

(A) Contract number;

(B) Order number(s), if applicable;

(C) Name of the product or service provided to the Government or used during performance of the contract;

(D) Name of the covered article or source subject to a FASCSA order;

(E) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Contractor;

(F) Brand;

(G) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(H) Item description; and

(I) Any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (c)(4)(i) of this clause:

(A) Any further available information about mitigation actions undertaken or recommended.

(B) In addition, the Contractor shall describe the efforts it undertook to prevent submission or use of the covered article or the product or service produced or provided by a source subject to an applicable FASCSA order, and any additional efforts that will be incorporated to prevent future submission or use of the covered article or the product or service produced or provided by a source that is subject to an applicable FASCSA order.

(d) *Removal.* For Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts or any other procurement instrument intended for use by multiple agencies, upon notification from the Contracting Officer, during the performance of the contract, the Contractor shall promptly make any necessary changes or modifications to remove any product or service produced or provided by a source that is subject to an applicable FASCSA order.

(e) *Subcontracts.* (1) The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (c)(1) of this clause, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products and commercial services.

(2) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the contract and any subcontracts and other contractual instruments under the contract. The Contractor or higher-tier subcontractor shall notify their subcontractors, and suppliers under other contractual instruments, that the FASCSA orders in the solicitation that are not in SAM apply to the contract and all subcontracts.

Alternate I (**DEC 2023**). As prescribed in 4.2306(c), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(b) *Prohibition.* (1) Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by any applicable FASCSA orders identified by the checkbox(es) in this paragraph (b)(1).

[*Contracting Officer must select either* ''*yes*'' *or* ''*no*'' *for each of the following types of FASCSA orders:*]

Yes ☐ No ☐ DHS FASCSA Order
Yes ☐ No ☐ DoD FASCSA Order
Yes ☐ No ☐ DNI FASCSA Order

Alternate II (**DEC 2023**). As prescribed in 4.2306(c)(2)(ii), substitute the following paragraph (b) in place of paragraph (b) of the basic clause. This clause applies to each order as identified by the Contracting Officer.

(b) *Prohibition.* (1) Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by any applicable FASCSA orders identified by the checkbox(es) in this paragraph (b)(1).

[*Contracting Officer must select either* ''*yes*'' *or* ''*no*'' *for each of the following types of FASCSA orders:*]

Yes ☐ No ☐ DHS FASCSA order
Yes ☐ No ☐ DoD FASCSA order
Yes ☐ No ☐ DNI FASCSA order

(2) The Contractor shall search for the phrase ''FASCSA order'' in the System for Award Management (SAM) at *https://www.sam.gov* to locate applicable FASCSA orders identified in paragraph (b)(1) of this clause.

(3) The Government may identify in the request for quotation (RFQ) or in the notice of intent to place an order additional FASCSA orders that are not in SAM, but are effective and apply to the order.

(4) A FASCSA order issued after the date of the RFQ or the notice of intent to place an order applies to this contract only if added by an amendment to the RFQ or in the notice of intent to place an order or added by modification to the order (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5)(i) If the contractor wishes to ask for a waiver, the Contractor shall disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or source subject to a FASCSA order;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Offeror;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) *Executive agency review of disclosures.* The contracting officer will review disclosures provided in paragraph (b)(5)(i) of this clause to determine if any waiver may be sought. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise covered by a FASCSA order and may instead make award to an offeror that does not require a waiver.

(End of clause)

■ 12. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(2) ''Lab and Other Covered Entities (NOV 2021)'' and adding ''Lab Covered Entities (**DEC 2023**)'' in its place;

■ c. Redesignating paragraphs (b)(9) through (64) as paragraphs (b)(11) through (66) and adding new paragraphs (b)(9) and (10);

■ d. Removing from paragraph (e)(1)(iii) ''Lab and Other Covered Entities (NOV 2021)'' and adding ''Lab Covered Entities (**DEC 2023**)'' in its place;

■ e. Redesignating paragraphs (e)(1)(vi) through (xxiv) as paragraphs (e)(1)(vii) through (xxv) and adding a new paragraph (e)(1)(vi); and

■ f. In Alternate II—

■ i. Revising the date of the alternate;

■ ii. Removing from paragraph (e)(1)(ii)(C) ''Lab and Other Covered Entities (NOV 2021)'' and adding ''Lab Covered Entities (**DEC 2023**)'' in its place; and

■ iii. Redesignating paragraphs (e)(1)(ii)(F) through (W) as paragraphs (e)(1)(ii)(G) through (X) and adding a new paragraph (e)(1)(ii)(F).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (DEC 2023)

(b) * * *

__(9) 52.204–28, Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts. (**DEC 2023**) (Pub. L. 115–390, title II).

__(10)(i) 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (**DEC 2023**) (Pub. L. 115–390, title II).

__(ii) Alternate I (**DEC 2023**) of 52.204–30.

* * * * *

(e)(1) * * *

(vi)(A) 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (**DEC 2023**) (Pub. L. 115–390, title II).

(B) Alternate I (**DEC 2023**) of 52.204–30.

* * * * *

Alternate II. (**DEC 2023**) * * *

(e)(1) * * *

(ii) * * *

(F)(*1*) 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (**DEC 2023**) (Pub. L. 115–390, title II).

(*2*) Alternate I (**DEC 2023**) of 52.204–30.

* * * * *

■ 13. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(1)(ii) ''Lab and Other Covered Entities (NOV 2021)'' and adding ''Lab Covered Entities (**DEC 2023**)'' in its place;

■ c. Redesignating paragraphs (a)(1)(v) through (xi) as paragraphs (a)(1)(vi) through (xii) and adding a new paragraph (a)(1)(v); and

■ d. Removing from paragraph (a)(2)(vii) ''(SEP 2023)'' and adding ''(**DEC 2023**)'' in its place.

The revision and addition read as follows:

52.213–4 Terms and Conditions-Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions-Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (DEC 2023)

* * * * *

(a) * * *

(1) * * *

(v) 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (**DEC 2023**) (Pub. L. 115–390, title II).

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■ 14. Amend section 52.244–6 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (c)(1)(v) ''Lab and Other Covered Entities (NOV 2021)'' and adding ''Lab Covered Entities (**DEC 2023**) in its place; and

■ c. Redesignating paragraphs (c)(1)(viii) through (xxi) as paragraphs (c)(1)(ix) through (xxii) and adding a new paragraph (c)(1)(viii) in its place.

The revision and addition read as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (DEC 2023)

* * * * *

(c)(1) * * *

(viii)(A) 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (**DEC 2023**) (Pub. L. 115–390, title II).

(B) Alternate I (**DEC 2023**) of 52.204–30.

* * * * *

[FR Doc. 2023–21320 Filed 10–4–23; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 31, and 52

[FAC 2023–06, FAR Case 2017–005, Item II; Docket No. 2017–0005; Sequence No. 1]

RIN 9000–AN32

Federal Acquisition Regulation: Whistleblower Protection for Contractor Employees

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement an act to enhance whistleblower protection for contractor employees. The rule makes permanent the protection for disclosure of certain information. It also clarifies that the prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to subcontractors, as well as contractors.

DATES: *Effective date:* November 6, 2023.

Applicability: At the time of any major modification to a contract, the agency shall make best efforts to include 52.203–17 in a contract that does not already contain it.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Malissa Jones, Procurement Analyst, at 571–886–4687 or by email at *malissa.jones@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–06, FAR Case 2017–005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 83 FR 66223 on December 26, 2018, to amend the FAR to implement an act to enhance whistleblower protection for contractor and grantee employees, including employees of subcontractors (Pub. L. 114–261), enacted December 14, 2016. Although the statute addresses both contractor and grantee employees, including employees of subcontractors, the FAR only directly covers contracts and contractors, and indirectly covers subcontracts and subcontractors with flowdown requirements. Grants are covered in title 2 of the Code of Federal Regulations.

This statute also amends 41 U.S.C. 4712 to make permanent the pilot program for enhancement of contractor protection from reprisal for sharing certain information. This program does not apply to DoD, NASA, or the Coast Guard, where similar permanent enhanced whistleblower protections for contractor employees were enacted by section 827 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, 10 U.S.C. 2409). Neither program applies to certain elements of the intelligence community (10 U.S.C. 2409(e) and 41 U.S.C. 4712(f)).

The four-year pilot program was enacted on January 2, 2013, by section 828 of the NDAA for FY 2013, with an

effective period of four years from the date of enactment (*i.e.,* January 2, 2013, through January 1, 2017). Section 1091(e) of the NDAA for FY 2014 (Pub. L. 113–66) modified the effective period of the pilot program to be four years from the date that is 180 days after the date of enactment (*i.e.,* July 1, 2013, through June 30, 2017). However, the program did not expire as it became permanent on December 14, 2016, before either of those expiration dates.

Public Law 114–261 also clarifies that the cost principles at 10 U.S.C. 2324(k) and 41 U.S.C. 4304 and 4310 that prohibit reimbursement for legal fees accrued in defense against reprisal claims apply to costs incurred by a contractor, subcontractor, or personal services contractor. Personal services contractors are contractors, and the cost principles generally already apply in the same way to costs incurred by subcontractors as to costs incurred by contractors. Three respondents submitted comments on the proposed rule.

II. Discussion and Analysis

DoD, GSA, and NASA reviewed the public comments in the development of the final rule. The comments did not recommend changes to the rule; instead, they expressed concerns regarding the underlying intent of the statute. While DoD, GSA, and NASA recognize the concerns identified in the public comments, the public comments are not within the scope of the rule. A discussion of the comments received is provided as follows:

A. Summary of Changes From Proposed Rule

No changes were made to the rule as a result of the public comments.

A minor change was made from the proposed rule regarding the applicability of FAR 52.203–17. The proposed rule prescribed the clause in acquisitions above the simplified acquisition threshold (SAT). The final rule changes the prescription of clause 52.203–17 to apply to all solicitations and contracts, including those at or below the SAT. The clause implements 41 U.S.C. 4712(d), which requires contractors and subcontractors to notify their employees of their whistleblower protections. The employee protections of the whistleblower program are applicable to all contracts regardless if expressly stated in the awarded contract. By changing the clause prescription to include solicitations and contracts at or below the SAT, contractors and subcontractors will have greater awareness of this responsibility and employees also will be more aware of the whistleblower protections.

B. Analysis of Public Comments

1. Whistleblower Declaration

Comment: A respondent stated that there should be a requirement for the whistleblower to declare they are blowing the whistle.

Response: Changing the statutory requirement is outside the scope of the rule.

2. Compulsory Reinstatement

Comment: A respondent stated that the current requirement to reinstate an employee if the IG or agency determine the whistleblower was retaliated against should not be compulsory.

Response: Changing the statutory requirement at 41 U.S.C. 4712(c) is outside the scope of the rule.

3. Ability To Waive Complaint

Comment: A respondent stated that FAR 3.905–1 should clarify whether or not whistleblower cases are exempt from employment agreements that waive the right to a jury trial or arbitration.

Response: FAR 3.905–1(d) states there is no waiver: ''No waiver. The rights and remedies provided for in 41 U.S.C. 4712 may not be waived by any agreement, policy, form, or condition of employment.'' The source of this text is 41 U.S.C. 4712(c)(7). Also see 41 U.S.C. 4712(c) for the right to a jury trial.

4. Standard for Liability

Comment: A respondent stated that the statutory standard for determining liability should be changed from an event that ''contributed'' to the negative employment action to one that ''substantially contributed'' or ''primarily contributed'' to the negative employment action.

Response: 41 U.S.C. 4712(a) states that ''an employee . . . may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing . . .''. The statute does not require a showing that the event substantially or primarily contributed to the negative employment action.

5. Allowability of Legal Fees

Comment: A respondent stated that the statutory requirement should include allowability of legal fees to settle *de minimis* suits and for suits when a contractor successfully defends itself from the whistleblower, as well as requiring the plaintiff to bear their own litigation costs unless the IG finds the whistleblowing ''substantially'' or ''primarily'' contributed to the retaliatory action.

Response: Some of these costs are already allowable, see FAR 31.205–47. Changing the statutory requirements is outside the scope of the rule.

6. Readability

Comment: A respondent stated that some of the changes in the rule make the text insufficiently readable. The respondent stated that the definition of ''abuse of authority'' and the text at FAR 3.903(a) and (c) have a low readability score.

Response: The definition of ''abuse of authority'' in the proposed rule was taken verbatim from 41 U.S.C. 4712(g)(1) and previously included in the FAR at 3.908–2. The text at 3.903(a) was substantively drawn from 41 U.S.C. 4712(a)(1) and reframed in active voice as a prohibition that applies to contractors and subcontractors. The text at 3.903(c) was taken verbatim from 41 U.S.C. 4712(a)(3)(A), with the exception of omitting references to grants. Because these are the words of the statute, no changes will be made.

7. Support for the Rule

Comment: A respondent stated that they support the rule.

Response: Noted.

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

Based on the determinations by the FAR signatories (DoD, GSA, and NASA) and the Administrator for Federal Procurement Policy, in accordance with 41 U.S.C. 1905, 1906, and 1907, this rule applies to all solicitations and resultant contracts, including contracts and subcontracts for acquisitions at or below the SAT, and contracts and subcontracts for the acquisition of commercial services and commercial products, including COTS items.

As explained below, the underlying statutory requirements that this rule implements are applicable to all Government contracts and subcontracts by operation of law. The FAR is being amended to include the clause, 52.203–17, Contractor Employee Whistleblower Rights, which implements 41 U.S.C. 4712, in all prime contracts and subcontracts. The discretion that the FAR signatories and the Administrator are exercising is essentially limited to the determination to incorporate the clauses established by this rule into contracts and subcontracts below the SAT and contracts and subcontracts for commercial products, commercial services, and COTS items. The FAR

Council is not determining when the whistleblower law applies but rather when the clause would be included in contracts and subcontracts. The clause does not apply to DoD, NASA and the Coast Guard, or applicable elements of the intelligence community.

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

Pursuant to 41 U.S.C. 1905, contracts or subcontracts in amounts not greater than the SAT will be exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1905 and states that the law applies to contracts and subcontracts in amounts not greater than the SAT; or (iii) the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding (D&F) that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. If none of these conditions are met, the FAR is required to include the statutory requirement(s) on a list of provisions of law that are inapplicable to contracts and subcontracts in amounts not greater than the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services

Pursuant to 41 U.S.C. 1906, acquisitions of commercial products and commercial services (other than acquisitions of COTS items, which are addressed in 41 U.S.C. 1907) are exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1906 and states that the law applies to acquisitions of commercial products and commercial services; or (iii) the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts for the procurement of commercial products and commercial services from the provision of law. If none of these conditions are met, the FAR is required to include the statutory requirement(s) on a list of provisions of law that are inapplicable to acquisitions of commercial products and commercial services.

C. Applicability to Contracts for Commercially Available Off-the-Shelf Items

Pursuant to 41 U.S.C. 1907, acquisitions of COTS items will be exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1907 and states that the law applies to acquisitions of COTS items; (iii) concerns authorities or responsibilities under the Small Business Act (15 U.S.C. 644) or bid protest procedures developed under the authority of 31 U.S.C. 3511 *et seq.;* 10 U.S.C. 3308; or 41 U.S.C. 3706 and 3707; or (iv) the Administrator for Federal Procurement Policy makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts for the procurement of COTS items from the provision of law.

D. Determinations

The requirements of FAR 52.203–17, Contractor Employee Whistleblower Rights, ensures that all contractor and subcontractor employees are covered by the whistleblower rights and remedies. Having the clause in all Federal Government contracts is beneficial to contractor and subcontractor employees, and the public. Employees benefit from having whistleblower rights and remedies so they can report potential wrongdoing without fear of reprisal. The public benefits from employees reporting wrongdoing which may result in actions to hold firms responsible for unlawful acts. It is in the best interest of the Government to apply whistleblower protections through a clause in all Federal Government contracts.

For these reasons, the FAR Council has determined that it is in the best interest of the Government to apply the final rule to contracts and subcontracts at or below the SAT and for the acquisition of commercial products and commercial services.

Similarly, the Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts and subcontracts for the acquisition of COTS items. It should be noted that the pilot program applied the clause to all commercial products, commercial services, and COTS acquisitions through 52.212–4(r), but only above the SAT for noncommercial acquisitions.

IV. Expected Impact of the Rule

The rule enhances whistleblower protection for contractor employees by making permanent the protection for disclosure of certain information, and by applying the requirement for contractors and subcontractors to inform their employees of the whistleblower protections through the inclusion of FAR clause 52.203–17 in acquisitions at or below the SAT. It also clarifies that FAR 31.205–47 prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to subcontractors, as well as contractors. DoD, NASA, and the Coast Guard have a different whistleblower program for contractor employees.

V. Executive Orders 12866 and 13563

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

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801–808) requires interim and final rules to be submitted to Congress before the rule takes effect. DoD, GSA, and NASA will send this to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

This rule implements Public Law 114–261, which was enacted December 14, 2016. The objective of this rule is to enhance whistleblower protection for contractor employees, by making permanent the protection for disclosure of certain information and ensuring that the prohibition on reimbursement for certain legal costs applies to subcontractors, as well as contractors, as required by Public Law 114–261.

This rule makes minor changes to the pilot program, along with making it a permanent program. In the final rule, the clause 52.203–17 will apply to all solicitations and contracts. The pilot program applied the clause to all commercial products and commercial services and COTS acquisitions through 52.212–4(r), but only above the SAT for non-commercial acquisitions. The FAR Council made a determination to apply the

clause to contracts at or below the SAT because the contractor employee protections apply regardless of contract value. By changing the clause prescription to include solicitations and contracts at or below the SAT, this makes clearer the rights and protections employees have.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

The program does not apply to DoD, NASA, and the Coast Guard, nor to certain elements of the intelligence community. Based on Federal Procurement Data System (FPDS) data for fiscal year 2020–2022, there were an average 146,242 new contract awards by agencies other than DoD, NASA, and the Coast Guard, including commercial awards and awards at or below the SAT that were awarded to small businesses (to an average of 23,984 unique vendors).

Regarding the amendment to the cost principles, addition of the words ''or subcontractor'' in multiple places throughout FAR 31.205–47 has no or a de minimis impact, because the cost principles generally already apply in the same way to costs incurred by subcontractors as to costs incurred by contractors.

There are no reporting, recordkeeping, or other compliance requirements in this rule.

DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 3, 31, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 31, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 3, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Revise section 3.900 to read as follows:

3.900 Scope of subpart.

This subpart implements various statutory whistleblower programs. This subpart does not implement 10 U.S.C. 4701, which is applicable only to DoD, NASA, and the Coast Guard.

(a) 41 U.S.C. 4712 is implemented in 3.900 through 3.906. These sections do not apply to—

(1) DoD, NASA, and the Coast Guard; or

(2) Any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)). Sections 3.900 through 3.906 do not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(i) Relates to an activity of an element of the intelligence community; or

(ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

(b) Section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), is implemented in 3.909, which is applicable to all agencies.

(c) Section 3.907 of this subpart implements section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and applies to all contracts funded in whole or in part by that Act.

■ 3. Amend section 3.901 by—

■ a. Adding in alphabetical order a definition for ''Abuse of authority'';

■ b. Removing the definition of ''Authorized official of an agency''; and

■ c. Revising the definition of ''Inspector General''.

The addition and revision read as follows.

3.901 Definitions.

* * * * *

Abuse of authority means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract of such agency.

* * * * *

Inspector General means an Inspector General appointed under chapter 4 of title 5 of the United States Code and any Inspector General that receives funding from, or has oversight over contracts awarded for, or on behalf of, the executive agency concerned. This definition does not apply to 3.907.

* * * * *

■ 4. Add section 3.902 to read as follows:

3.902 Classified information.

41 U.S.C. 4712 does not provide any right to disclose classified information not otherwise provided by law.

■ 5. Revise section 3.903 to read as follows:

3.903 Policy.

(a)(1) Contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this section, information that the employee reasonably believes is—

(i) Evidence of gross mismanagement of a Federal contract;

(ii) A gross waste of Federal funds;

(iii) An abuse of authority relating to a Federal contract;

(iv) A substantial and specific danger to public health or safety; or

(v) A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract).

(2) A reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Disclosure may be made to the following entities:

(1) A Member of Congress or a representative of a committee of Congress.

(2) An Inspector General.

(3) The Government Accountability Office.

(4) A Federal employee responsible for contract oversight or management at the relevant agency.

(5) An authorized official of the Department of Justice or other law enforcement agency.

(6) A court or grand jury.

(7) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(c) An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract shall be deemed to have made a disclosure.

■ 6. Revise section 3.904 to read as follows:

3.904 Complaints.

■ 7. Add section 3.904–1 to read as follows:

3.904–1 Procedures for filing complaints.

A contractor or subcontractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may submit a complaint with the Inspector General of the agency concerned. Procedures for submitting fraud, waste, abuse, and whistleblower complaints are generally accessible on agency Office of Inspector General hotline or whistleblower internet sites or the complainant may directly contact the cognizant Office of the Inspector General for submission instructions. A complaint by the employee may not be brought under 41 U.S.C. 4712 more than three years after the date on which the alleged reprisal took place.

■ 8. Add section 3.904–2 to read as follows:

3.904–2 Procedures for investigating complaints.

(a) Investigation of complaints will be in accordance with 41 U.S.C. 4712(b).

(b) Upon completion of the investigation, the head of the agency shall ensure that the report of findings has been provided by the Inspector General to the head of the agency and to—

(1) The complainant and any person acting on the complainant's behalf; and

(2) The contractor and/or subcontractor alleged to have committed the violation.

(c) The complainant, contractor, and/or subcontractor shall be afforded the opportunity to submit a written response to the report of findings to the head of the agency and the Office of Inspector General in a time and manner that permits the agency head to take action not later than 30 days after receiving the report, as required by 3.905–1(a).

■ 9. Revise section 3.905 to read as follows:

3.905 Remedies and enforcement of orders.

■ 10. Add section 3.905–1 to read as follows:

3.905–1 Remedies.

(a) *Agency response to Inspector General report.* Not later than 30 days after receiving a report pursuant to 3.904–2, the head of the agency shall—

(1) Determine whether sufficient basis exists to conclude that the contractor or subcontractor has subjected the employee who submitted the complaint to a reprisal as prohibited by 3.903; and

(2) Either issue an order denying relief or take one or more of the following actions:

(i) Order the contractor or subcontractor to take affirmative action to abate the reprisal.

(ii) Order the contractor or subcontractor to reinstate the complainant employee to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor or subcontractor to pay the complainant employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(iv) Consider disciplinary or corrective action against any official of the executive agency, if appropriate.

(b) *Complainant's right to go to court.* (1) Paragraph (b)(2) of this section applies if—

(i) The head of the agency issues an order denying relief; or

(ii)(A) The head of the agency has not issued an order—

(*1*) Within 210 days after the submission of the complaint; or

(*2*) Within 30 days after the expiration of an extension of time granted in accordance with 41 U.S.C. 4712(b)(2)(B) for the submission of the report to those stated in 3.904–2(b); and

(B) There is no showing that such delay is due to the bad faith of the complainant.

(2) If the conditions in either paragraph (b)(1)(i) or (ii) of this section are met—

(i) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant may bring a *de novo* action at law or equity against the contractor or subcontractor to seek compensatory damages and other relief available under 41 U.S.C. 4712 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(A) Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(B) An action under this authority may not be brought more than 2 years after the date on which remedies are deemed to have been exhausted.

(c) *Admissibility in evidence.* An Inspector General determination and an agency head order denying relief under this section shall be admissible in evidence in any *de novo* action at law or equity brought pursuant to 41 U.S.C. 4712.

(d) *No waiver.* The rights and remedies provided for in 41 U.S.C. 4712 may not be waived by any agreement, policy, form, or condition of employment.

■ 11. Add section 3.905–2 to read as follows:

3.905–2 Enforcement of orders.

(a) Whenever a contractor or subcontractor fails to comply with an order issued under 3.905–1(a)(2), the head of the agency concerned shall file an action for enforcement of the order in the U.S. district court for a district in which the reprisal was found to have occurred. In any action brought pursuant to this authority, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The complainant employee upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(b) Any person adversely affected or aggrieved by an order issued under 3.905–1(a)(2) may obtain review of the order's conformance with 41 U.S.C. 4712 and its implementing regulations, in the U.S. court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

■ 12. Revise section 3.906 to read as follows:

3.906 Contract clause.

The contracting officer shall insert the clause at 52.203–17, Contractor Employee Whistleblower Rights, in all solicitations and contracts, except solicitations and contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community (see 3.900(a)).

3.907–7 [Amended]

■ 13. Amend section 3.907–7 by removing ''Reinvestment Act of 2009 in'' and adding ''Reinvestment Act of 2009, in'' in its place.

3.908 [Removed and Reserved]

■ 14. Remove and reserve section 3.908.

3.908–1 through 3.908–9 [Removed]

■ 15. Remove sections 3.908–1 through 3.908–9.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 16. Amend section 31.205–47—
■ a. In paragraph (a), in the definition of ''Costs'' by removing ''or others retained by the contractor to assist it;'' and adding ''or others retained by the contractor or subcontractor to assist it;'' in its place;
■ b. In paragraph (b) introductory text by removing ''law or regulation by the contractor'' and adding ''law or regulation by the contractor or subcontractor'' in its place;
■ c. In paragraph (b)(2) by removing ''either a finding of contractor liability'' and adding ''either a finding of contractor or subcontractor liability'' in its place;
■ d. In paragraph (b)(3)(i) by removing ''the contractor;'' and adding ''the contractor or subcontractor;'' in its place;
■ e. In paragraph (c)(1) by removing ''between the contractor'' and adding ''between the contractor or subcontractor'' in its place;
■ f. In paragraph (c)(2)(i) by removing ''incurred by the contractor'' and adding ''incurred by the contractor or subcontractor'' in its place;
■ g. In paragraph (d)(1) by removing ''Federal contract; or'' and adding ''Federal contract or subcontract; or'' in its place;
■ h. In paragraph (f) introductory text by removing ''connection with'' and adding ''connection with the following'' in its place;
■ i. In paragraph (f)(4) by removing ''the contractor'' wherever it appears and adding ''the contractor or subcontractor'' in its place;
■ j. Revising paragraph (f)(5);
■ k. In paragraph (f)(6) by removing ''contract'' and adding ''contract or subcontract'' in its place;
■ l. In paragraph (f)(7) by removing ''the contractor is'' and adding ''the contractor or subcontractor is'' in its place; and
■ m. In paragraph (g) by removing ''the contractor'' wherever it appears and adding ''the contractor or subcontractor'' in its place.

The revision reads as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(f) * * *

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors or subcontractors arising from either—

(i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or

(ii) Dual sourcing, coproduction, or similar programs, are unallowable, except when—

(A) Incurred as a result of compliance with specific terms and conditions of the contract or subcontract or written instructions from the contracting officer; or

(B) When agreed to in writing by the contracting officer.

* * * * *

31.603 [Amended]

■ 17. Amend section 31.603 by removing from paragraph (b)(15) ''incurred by a contractor'' and ''regulation by the contractor'' and adding ''incurred by a contractor or subcontractor'' and ''regulation by the contractor or subcontractor'' in their place, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 18. Revise section 52.203–17 to read as follows:

52.203–17 Contractor Employee Whistleblower Rights.

As prescribed in 3.906, insert the following clause:

Contractor Employee Whistleblower Rights (NOV 2023)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at 41 U.S.C. 4712 and Federal Acquisition Regulation (FAR) 3.900 through 3.905.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in FAR 3.900 through 3.905.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts.

(End of clause)

■ 19. Amend section 52.212–4 by revising the date of the clause and paragraph (r) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions—Commercial Products and Commercial Services (NOV 2023)

* * * * *

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

* * * * *

■ 20. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (b)(4) through (64) as paragraphs (b)(5) through (65);
■ c. Adding a new paragraph (b)(4);
■ d. Redesignating paragraphs (e)(1)(ii) through (xxiv) as paragraphs (e)(1)(iii) through (xxv);
■ e. Adding a new paragraph (e)(1)(ii); and
■ f. In Alternate II:
■ i. Revising the date of the alternate;
■ ii. Redesignating paragraphs (e)(1)(ii)(C) through (W) as paragraphs (e)(1)(ii)(D) through (X); and
■ iii. Adding a new paragraph (e)(1)(ii)(C).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services (NOV 2023)

* * * * *

(b) * * *

__(4) 52.203–17, Contractor Employee Whistleblower Rights (NOV 2023) (41 U.S.C. 4712); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR 3.900(a).

* * * * *

(e)(1) * * *

(ii) 52.203–17, Contractor Employee Whistleblower Rights (NOV 2023) (41 U.S.C. 4712).

* * * * *

Alternate II (NOV2023). * * *

* * * * *

(e)(1) * * *

(ii) * * *

(C) 52.203–17, Contractor Employee Whistleblower Rights (NOV 2023) (41 U.S.C. 4712).

* * * * *

■ 21. Amend section 52.213–4 by—
■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(2)(vii) ''(SEP 2023)'' and adding '' (NOV 2023)'' in its place;

■ c. Redesignating paragraphs (b)(1)(i) through (xxi) as paragraphs (b)(1)(ii) through (xxii); and

■ d. Adding a new paragraph (b)(1)(i).

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other than Commercial Products and Commercial Services) (NOV 2023)

* * * * *

(b) * * *

(1) * * *

(i) 52.203–17, Contractor Employee Whistleblower Rights (NOV 2023) (41 U.S.C. 4712); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR 3.900(a).

* * * * *

■ 22. Amend section 52.244–6 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (c)(1)(iii) through (xxi) as paragraphs (c)(1)(iv) through (xxii); and

■ c. Adding a new paragraph (c)(1)(iii).

The revision and addition read as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (NOV 2023)

* * * * *

(c)(1) * * *

(iii) 52.203–17, Contractor Employee Whistleblower Rights (NOV 2023) (41 U.S.C. 4712); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR 3.900(a).

* * * * *

[FR Doc. 2023–21321 Filed 10–4–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2023–06, FAR Case 2021–012, Item III; Docket No. FAR–2021–0012; Sequence No. 1]

RIN 9000–AO29

Federal Acquisition Regulation: 8(a) Program

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to update and clarify requirements associated with the 8(a) program.

DATES: Effective November 6, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, Procurement Analyst, at 202–803–3188 or by email at *dana.bowman@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–06, FAR Case 2021–012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 87 FR 76598 on December 15, 2022, to implement regulatory changes made by the Small Business Administration (SBA), in its final rule published in the **Federal Register** at 85 FR 66146 on October 16, 2020. SBA initiated a review of its regulations in response to the prior administration's Governmentwide regulatory reform initiative. As a result, SBA revised the 8(a) program regulations to more clearly articulate SBA's intent with regard to certain aspects of the 8(a) program to eliminate confusion and decrease burdens on procuring activities and 8(a) participants.

One respondent submitted comments in response to the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule; however, no changes were made as a result of the public comments received. A discussion of the comments received is provided as follows:

A. Summary of Significant Changes

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. Support for the Rule

Comment: The respondent expressed support for the rule.

Response: The Councils acknowledge the respondent's support for the rule.

2. Negative Impacts of the Rule

Comment: The respondent indicated that moving contracts from the 8(a) Program inflicts harm on small businesses that are dependent upon those contracts for their growth and viability. The respondent indicated that it has had its contracts moved out of the 8(a) program into ''new'' contracts or limited competition contract vehicles, not available to all 8(a) program participants. The respondent indicated further that it is not always aware that a contract was to be moved to a limited competition contract, and if it was not a contract holder on that contract, then it could not pursue the opportunity. The respondent indicated that this can cause serious harm to small businesses that are counting on that revenue. The respondent stated that requiring notification to the SBA that a contract is being removed from the 8(a) Program is a positive step, but that it does not decrease the harm being done to a small business that is losing the contract. The respondent concluded that, overall, the proposed revisions are positive, but removing contracts from the 8(a) Program is detrimental to small businesses that are the backbone of the defense industrial base.

Response: The Councils acknowledge the respondent's concerns regarding the impact of moving contracts out of the 8(a) Program. This rule implements SBA's regulatory changes made in its final rule published at 85 FR 66146 on October 16, 2020, that clarified certain aspects of the 8(a) Program. To ensure procurements are not removed from the 8(a) Program without SBA consent, this rule adds a requirement for contracting officers to notify SBA of follow-on, non-8(a) procurements, and specifies that contracting officers should notify SBA when a mandatory source will be utilized for a follow-on to an 8(a) contract. This rule also clarifies that

SBA may appeal a contracting officer's decision that an acquisition previously procured under the 8(a) Program is a new requirement not subject to the release requirements. However, and as stated in SBA's preamble, these changes do not modify existing 8(a) Program requirements; instead, they emphasize the requirement for SBA to agree to release a requirement from the 8(a) Program.

C. Other Changes

Minor editorial changes to the proposed rule were made at FAR 19.815(d), (e), and (f).

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

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses.

IV. Expected Impact of the Rule

This rule updates and clarifies requirements associated with the 8(a) program to eliminate confusion among 8(a) concerns and procuring activities. Contracting officers are required to submit blanket purchase agreements (BPAs) issued under FAR part 13 and FAR part 13 BPA orders in the 8(a) Program to SBA for acceptance. Contracting officers are also required to notify SBA of follow-on, non-8(a) procurements, and should notify SBA when a mandatory source will be utilized for a follow-on to an 8(a) contract. Additionally, the SBA certificate of competency program does not apply to 8(a) sole-source awards; therefore, contracting officers will no longer be required to submit these actions to SBA. The impact of these changes is expected to be beneficial to the Government, contractors, and offerors as 8(a) program requirements are clarified, and ambiguities are reduced for small business entities and procuring activities. Any cost to the Government is not expected to be significant.

V. Executive Orders 12866 and 13563

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

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801–808) requires interim and final rules to be submitted to Congress before the rule takes effect. DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) to the 8(a) Program in its final rule dated October 16, 2020 (85 FR 66146). SBA revised its 8(a) program regulations to eliminate confusion among small businesses and procuring activities. The final rule clarifies that the certificate of competency program is not applicable to 8(a) sole-source awards. Additionally, the final rule adds a requirement for the contracting officer to submit an offering letter for blanket purchase agreements (BPAs) and orders placed under BPAs under the 8(a) Program to SBA, and for SBA to accept such offers. The rule also clarifies an 8(a) concern's eligibility for two-step design build acquisitions and sole-source awards made under the 8(a) program. The rule also requires the procuring activity to submit a notification to SBA when a contracting officer determines that a procurement, previously procured under the 8(a) program, is a new requirement that is not subject to SBA release requirements. The rule also requires a notification when the procuring activity intends to procure a follow-on to an 8(a) procurement using an existing limited competition contract vehicle, not available to all 8(a) program participants, when the current or previous 8(a) contract was available to all 8(a) participants. This rule also specifies that SBA reserves the right to appeal these decisions.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This final rule will impact 8(a) Program participants and the Government by clarifying the 8(a) Program regulations and ensuring follow-on requirements to 8(a) procurements remain in the 8(a) Program when appropriate. Based on data in the System for Award Management, the estimated number of 8(a) small businesses is 5,217, and the estimated number of 8(a) joint ventures is 384. Therefore, the estimated number of total small entities to which the rule applies is 5,601. According to the Federal Procurement Data System, 7,473 8(a) sole-source awards and 1,088 competitive 8(a) awards were made in FY 2020, and 6,369 8(a) sole-source awards and 1,251 competitive 8(a) awards were made in FY 2021, and 5,752 8(a) sole-source awards and 1,056 competitive 8(a) awards were made in FY 2022. This averages out to 6,531 8(a) sole-source awards and 1,132 competitive 8(a) awards made in the last three fiscal years.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known significant alternative approaches that would accomplish the stated objectives.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Part 19

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

19.601 [Amended]

■ 2. Amend section 19.601 by—

■ a. Removing from paragraph (b) the phrase ''Small Business Administration (SBA)'' and adding ''SBA'' in its place; and

■ b. Removing from the first sentence of paragraph (c) the phrase ''Government acquisitions'' and adding ''Government acquisitions except for 8(a) sole-source awards'' in its place and removing from the second sentence of paragraph (c) the word ''also''.

■ 3. Revise section 19.804–5 to read as follows:

19.804–5 Basic ordering agreements and blanket purchase agreements.

(a) The contracting office shall submit an offering letter for, and SBA must accept, each order under a basic ordering agreement (BOA) or a blanket purchase agreement (BPA) issued under part 13 (see 13.303), in addition to the agency offering and SBA accepting the BOA or BPA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of orders issued under a specific BOA or BPA to exceed the competitive threshold amount in 19.805–1.

(c) Once an 8(a) participant's program term expires, the participant otherwise exits the 8(a) program, or becomes other than small for the NAICS code assigned under the BOA or the BPA, SBA will not accept new orders under the BOA or BPA for the participant.

■ 4. Amend section 19.805–2 by—
■ a. Revising the second sentence in paragraph (b) introductory text;
■ b. Redesignating paragraph (b)(2) as paragraph (b)(3); and
■ c. Adding a new paragraph (b)(2).

The revision and addition read as follows:

19.805–2 Procedures.

* * * * *

(b) * * * Eligibility is based on section 8(a) program criteria (see 13 CFR 124.501(g) and 19.816(c)). * * *

(2) For a two-step design-build procurement, an 8(a) participant must be eligible for award under the 8(a) program on the initial date for receipt of phase one offers specified in the solicitation (see 13 CFR 124.507(d)(3)).

* * * * *

■ 5. Amend section 19.808–1 by—
■ a. Redesignating paragraph (e) as paragraph (f);
■ b. Adding a new paragraph (e); and
■ c. Removing from the newly redesignated paragraph (f) the phrase ''sole source award'' and adding ''sole-source award'' in its place.

The addition reads as follows:

19.808–1 Sole source.

* * * * *

(e) A concern must be a current participant in the 8(a) program at the time of an 8(a) sole-source award.

* * * * *

■ 6. Revise section 19.808–2 to read as follows:

19.808–2 Competitive.

In competitive 8(a) acquisitions, including follow-on 8(a) acquisitions, subject to part 15, the contracting officer conducts negotiations directly with the competing 8(a) participants. Conducting competitive negotiations among eligible 8(a) participants prior to SBA's formal acceptance of the acquisition for the 8(a) program may be grounds for the SBA's not accepting the acquisition for the 8(a) program.

■ 7. Amend section 19.810 by adding paragraph (a)(4) to read as follows:

19.810 SBA appeals.

(a) * * *

(4) A contracting officer's decision that an acquisition previously procured under the 8(a) program is a new requirement not subject to the release requirements at 13 CFR 124.504(d)(1) (see 19.815(a) and (d)(1)).

* * * * *

■ 8. Amend section 19.815 by—
■ a. Revising the section heading and paragraph (a);
■ b. Removing from paragraph (b) the phrase ''a non-8(a) procurement'' and adding ''a follow-on, non-8(a) procurement,'' in its place; and
■ c. Adding paragraphs (d) through (f).

The revisions and additions read as follows:

19.815 Release and notification requirements for non-8(a) procurement.

(a) Once a requirement has been accepted by SBA into the 8(a) program, any follow-on requirements (see definition at 13 CFR 124.3) shall remain in the 8(a) program unless—

(1) SBA agrees to release the requirement from the 8(a) program for a follow-on, non-8(a) procurement in accordance with 13 CFR 124.504(d) (see paragraph (b) of this section); or

(2) There is a mandatory source (see 8.002 or 8.003; also see paragraph (f) of this section).

* * * * *

(d)(1) When a contracting officer decides that a requirement previously procured under the 8(a) program is a new requirement and not a follow-on requirement to an 8(a) contract(s), the contracting officer shall coordinate with and submit a written notice to the SBA District Office servicing the 8(a) incumbent firm and to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) indicating that the agency intends to procure the requirement outside the 8(a) program (see 19.810(a)(4)).

(2) The written notice shall include a copy of the acquisition plan, if available; the performance work statement (PWS), statement of work (SOW), or statement of objectives (SOO) for the new contract requirement; and the values of the existing 8(a) contract(s) and the new contract requirement.

(e)(1) When a contracting officer decides to procure a follow-on requirement to an 8(a) contract using an existing, limited competition contracting vehicle that is not available to all 8(a) participants, and the current or previous 8(a) contract was available to all 8(a) participants, the contracting officer shall coordinate with and submit a written notice to the SBA District Office servicing the 8(a) incumbent firm and to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) indicating the intent to do so.

(2) The written notice shall include a copy of the acquisition plan, if available; the PWS, SOW, or SOO for the new contract requirement; and the values of both contracts.

(f)(1) When a mandatory source will be used for a follow-on requirement to an 8(a) contract, the contracting officer should submit a written notice to the SBA Associate Administrator for Business Development of the intent to do so at least 30 days prior to the end of the contract or order in accordance with 13 CFR 124.504(d)(4)(ii).

(2) The written notice should include a written determination that a mandatory source will be used to fulfill the requirement.

19.816 [Amended]

■ 9. Amend section 19.816 by removing from paragraph (c) the word ''criteria'' and adding ''criteria (see 13 CFR 124.507(d))'' in its place.

[FR Doc. 2023–21322 Filed 10–4–23; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2023–06; Item IV; Docket No. FAR–2023–0052; Sequence No. 4]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes an amendment to the Federal Acquisition

Regulation (FAR) in order to make needed editorial changes.

DATES: Effective November 6, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–06, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes editorial changes to 48 CFR part 52.

List of Subjects in 48 CFR Part 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 2. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing from paragraph (k)(1) introductory text ''(1) □ Maintenance'' and adding ''□ (1) Maintenance'' in its place; and

■ c. Removing from paragraph (k)(2) introductory text ''(2) □ Certain'' and adding ''□ (2) Certain'' in its place.

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (NOV 2023)

* * * * *

[FR Doc. 2023–21323 Filed 10–4–23; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–06; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2023–06, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2023–06, which precedes this document.

DATES: October 5, 2023.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2023–06 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2023–06

Item	Subject	FAR case	Analyst
I*	Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders.	2020–011	Ryba.
II*	Whistleblower Protection for Contractor Employees	2017–005	Jones.
III*	8(a) Program	2021–012	Bowman.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023–06 amends the FAR as follows:

Item I—Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders (FAR Case 2020–011)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement supply chain risk information sharing and exclusion or removal orders required by the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council (FASC).

The FAR is being amended to implement applicable exclusion or removal orders recommended by the FASC when they are issued by the Secretary of Homeland Security, the Secretary of Defense, or the Director of National Intelligence. Offerors will be required to check both the System for Award Management and individual solicitations for applicable exclusion orders.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

Item II—Whistleblower Protection for Contractor Employees (FAR Case 2017–005)

This final rule amends the FAR to implement Public Law 114–261 (41 U.S.C. 4712). The rule enhances whistleblower protection for contractor employees by making permanent the protection for disclosure of certain information. It also clarifies that the FAR 31.205–47 prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to subcontractors, as well as contractors.

DoD, NASA and the Coast Guard have a different whistleblower program for contractor employees.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item III—8(a) Program Changes (FAR Case 2021–012)

This final rule amends the FAR to update and clarify requirements associated with the Small Business Administration's (SBA) 8(a) program. Specifically, this rule clarifies that the certificate of competency program is not applicable to 8(a) sole-source awards and requires that BPAs issued under part 13, including orders placed under part 13 BPAs under the 8(a) Program, must be offered to, and accepted by SBA. Additionally, this rule clarifies an 8(a) participant's eligibility for award for a two-step design procurement and clarifies that a concern must be a current participant in the 8(a) program at the time of an 8(a) sole-source award. This rule also implements policy that allows the SBA to appeal a contracting officer's decision that an acquisition previously procured under the 8(a) program is a new requirement not subject to the release requirements set forth in 13 CFR. Furthermore, this rule requires the contracting officer to notify the SBA when the contracting officer decides that a requirement, previously procured under the 8(a) program, is a new requirement and not a follow-on requirement to an 8(a) contract; and when the procuring activity intends to procure a follow-on requirement using an existing limited contracting vehicle that is not available to all 8(a) participants and the current or previous 8(a) contract was available to all 8(a) participants. Lastly, this rule encourages the contracting officer to notify the SBA Associate Administrator for Business Development at least 30 days prior to the end of the contract or order when a mandatory source will be used for a follow-on requirement to an 8(a) contract.

Item IV—Technical Amendments

An administrative change is made at FAR 52.212–3.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–21324 Filed 10–4–23; 8:45 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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